

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.,

 Plaintiff,
v.
LAWSON SOFTWARE, INC.,

 Defendant.

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:
: Civil Action
: No. 3:09CV620
:
: April 4 , 2013
:
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COMPLETE TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

DAILY

APPEARANCES:

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1 (The proceedings in this matter commenced
2 at 9:30 a.m.)

3 THE CLERK: Civil Action No. 3:09CV00620,
4 ePlus, Incorporated v. Lawson Software, Incorporated.

5 MS. Jennifer A. Albert, Mr. Michael G.
6 Strapp, Mr. Craig T. Merritt and Mr. Paul W. Jacobs,
7 II, represent the plaintiff.

8 Mr. Daniel Thomasch, Mr. Josh Krevitt, Mr.
9 Dabney J. Carr, IV, Mr. Richard W. Mark and
10 Mr. Christopher D. Dusseault represent the defendant.

11 Are counsel ready to proceed?

12 MS. ALBERT: Yes, Your Honor.

13 MR. THOMASCH: Ready for the defense, Your
14 Honor.

15 THE COURT: All right. Yesterday evening
16 you-all were going to give me a list of the documents
17 that you wanted to put in. Have you got that list?

18 MR. THOMASCH: I do, Your Honor.

19 THE COURT: May I have it? I think what I'm
20 going to do is reflect upon this. They filed a brief
21 last night. I just need to look at it. So we'll keep
22 at the record open for you for that.

23 MR. THOMASCH: We have a mini motion and
24 memorandum to admit right on the front of the list.

25 THE COURT: A mini motion?

1 MR. THOMASCH: It's very short, Your Honor.

2 THE COURT: Well, look, I might like to get
3 those appropriated in the new rules of procedure.

4 MR. THOMASCH: Your Honor, you did ask us to
5 for consult. We consulted ever so briefly, but --

6 THE COURT: And it didn't work?

7 MR. THOMASCH: Well, I'm not so sure it
8 didn't work. It may have reduced it in part. Many of
9 those exhibits, as you'll see from the list in front
10 of Your Honor, are excerpts of the trial transcript as
11 a whole. It's the witnesses that we feel had
12 testimony that bear on the issues in this proceeding.
13 There has been a concern raised about cherrypicking or
14 excerpts. That's why we put in the whole transcript
15 of the witness and not just the pages that we liked.
16 We put in the whole thing.

17 But we have no objection whatsoever to ePlus
18 putting in any other part of the trial transcript they
19 deem relevant. I believe they would like to say the
20 whole transcript is just in. Other than that, it does
21 put in material from the underlying case that has no
22 possible bearing on this. I don't object. It's just
23 seems like it might be overdoing it. But our issue is
24 not to try to keep anything out. It's just to try to
25 make unambiguously clear what went on at the first

1 trial, so that that's in the record. The parties can
2 cite to it and a reviewing court can look to it if
3 need be. That's all we're trying to accomplish.

4 THE COURT: I'll look at it, but it
5 implicates something much broader than that. It has
6 to do with what that case means. If that case means
7 that we retry the whole case, then the Federal Circuit
8 has done something unprecedented, and I would have
9 thought that they would have said so. But we're not
10 going to retry -- we're going to draw the line here
11 and let the Federal Circuit decide how it wants to go
12 because it's going to go on your case, I guess, from
13 what you-all say. You're going to take it up. That's
14 fine. But I'm not going to be the one that opens the
15 floodgates and says we're retrying the whole case
16 every time we have a contempt issue.

17 I've been through a number of contempt cases
18 and part of it involved what happened at the trial,
19 and I've never seen a process like suggest. And in
20 addition to that, I have read all of the cases that
21 you all have cited to me since TiVo, and I find
22 nothing in any of the authority of the other district
23 courts that have taken this approach.

24 So I need to think through all that when I'm
25 dealing with it. And we'll deal with admission of

1 this later. I have a couple of other questions.

2 I was examining TiVo last night again for
3 another purpose. And it occurred to me that something
4 I did last week may have not been what I intended to
5 do. I don't want to make a shaggy dog story out of
6 it, but I cut out -- I can't remember the docket
7 number of the opinion, but I said you can't retry the
8 validity issues.

9 In doing that, I did not mean -- in doing
10 that, I went back and thought through was there
11 anything in the Goldberg testimony that fell into the
12 category of evidence that is permitted by TiVo in
13 showing innovation. The colorability analysis. It's
14 at page 88283 of TiVo. It says, A Court must also
15 look to the relevant prior art if any is available to
16 determine if the modification merely employs or
17 combines elements already known in the prior art in a
18 manner that would have been obvious to a person of
19 ordinary skill in the art at the time the modification
20 was made. A non-obvious modification may well result
21 in a finding of more than colorable difference.

22 I made a note to myself to go back to look at
23 Goldberg's report to see if there was any such
24 testimony of that as opposed to validity *vel non*. I
25 didn't see any, but I don't remember going back to

1 double check my opinion to make sure I didn't
2 inadvertently knock out something that pertained to
3 that area. I don't think I did. I've gone back
4 quickly to scan it as quick as I can given the time.

5 But, Mr. Lo or Mr. Thomasch, I don't care,
6 Mr. Lo handled the examination, was their evidence
7 that fit that component of TiVo that you all intended
8 to put in because I didn't see it in the Goldberg
9 report.

10 MR. THOMASCH: I think the answer to your
11 question, Your Honor, is no, but it's really a mirror
12 image of that. We did not say that the change that
13 was made was innovative. The change that was made
14 was a decade back.

15 THE COURT: Right.

16 MR. THOMASCH: But the flip side of that,
17 Your Honor, that we do feel very strongly is relevant
18 is that it was the functionality that was removed that
19 was the advancement over the prior art that ePlus said
20 was the innovation and was the essence of their patent
21 in the first instance.

22 THE COURT: Where is that in Goldberg's
23 opinion?

24 MR. THOMASCH: It's not in Goldberg's
25 opinion. That has been our view as to the problem of

1 the changing theory of infringement that we feel that
2 they have made.

3 THE COURT: Well, I don't even understand --
4 I don't think I really understand what you said.

5 MR. THOMASCH: That aspect Mr. Lo could
6 address.

7 THE COURT: As long as I didn't cut out
8 evidence inadvertently of the sort and as long as I
9 correctly read Goldberg's report, then I'm okay. But
10 I went back to he check it and I didn't see anything.
11 However, I remember making a note to myself to go
12 check the opinion to see if in fact I had
13 inadvertently done something I didn't intend to do,
14 and I don't remember editing the opinion with that in
15 mind. And I wasn't looking for a major edit. It was
16 just one of the paragraphs or something that was
17 excised out, I believe. I was trying to check. But
18 it's been awhile and I decided as I was reading TiVo I
19 ought to double check it to let you-all put that
20 evidence in if you have any.

21 All right. Mr. Thomasch says there isn't any
22 such evidence. So I don't need to worry about it.

23 MR. LO: Your Honor, Dr. Goldberg in his
24 report cites to testimony from the underlying trial
25 with respect to validity in the colorability section,

1 and he does so for two reasons. One of which I know
2 Your Honor has addressed and probably does not want to
3 rehear. And the first one, just briefly, is that
4 because TiVo requires you to look at what was
5 contended or proven, he looked at that to see what the
6 contentions were.

7 I understand Your Honor is moving pass that.
8 But the other reason he looks at what, for example,
9 Dr. Hilliard said in the underlying trial with respect
10 to validity, is that Dr. Hilliard would make
11 statements in terms of, Here was the prior art. Here
12 is the --

13 THE COURT: You need to get this into a
14 sentence that I understand the framework of first.
15 I'm trying to move the case along and get us going. I
16 don't want to in asking you what time it is to hear
17 the history of Switzerland.

18 So help me. What's your point just so I can
19 get that in mind?

20 MR. LO: Dr. Goldberg looks to Mr. Hilliard's
21 analysis in the underlying trial because the
22 statements about how --

23 THE COURT: That's not what I'm asking you.
24 I'm not asking you about whether he looked to the
25 statement in the underlying trial. I'm asking you --

1 you know TiVo, right?

2 MR. LO: Yes.

3 THE COURT: Let's just -- the court also
4 looked at relevant prior art if any is available to
5 determine if the modification, the modification,
6 merely employs or combines elements already known in
7 the prior art in a manner that would have been obvious
8 to a person of ordinary skill in the art at the time
9 the modification was made.

10 All I want to know is did you have any
11 testimony from Dr. Hilliard that fit that description,
12 and did I by accident strike it out? And I think the
13 answer is no. That's all I'm trying to figure out.

14 MR. LO: That is correct, Your Honor.

15 THE COURT: Okay. That's fine. Thank you.

16 You-all have your objection on the other part
17 of it and I don't want to the hear any argument on
18 that. All right. Thank you.

19 You-all want to know something about
20 scheduling. In part, that has to do with how much
21 time you-all have left to go. How much time do you
22 have left for your -- you've got infringement left.

23 MR. STRAPP: We have three witnesses on
24 infringement. It should not take more than today
25 definitely, but we probably will be done by early

1 afternoon.

2 THE COURT: How much time is your time?

3 MR. THOMASCH: We have at most one witness on
4 infringement. We believe we will certainly finish
5 the infringement case today and may finish most of the
6 damages case today, but not the entire damages case.

7 THE COURT: All right. You think we'll be
8 finished Friday?

9 MR. THOMASCH: I'm confident --

10 THE COURT: I want to know whether to tell
11 the court staff we're going to be here on Saturday.
12 And my dog asked me if we're going to get to go to the
13 dog park on sat morning.

14 MR. THOMASCH: We can't assume we're going to
15 be done today. I don't see any reason we wouldn't be
16 done tomorrow.

17 If we can bring one matter to the Court's
18 attention. Because we won't necessarily finish today,
19 we have one witness who is no longer an employee of
20 Lawson who came who is in the damages phase, and we
21 just want to --

22 THE COURT: You want to take that witness out
23 of order?

24 MR. THOMASCH: We want to assure he gets on
25 and off. If he could go on maybe right after lunch,

1 and by that time we may be in the damages case. We'll
2 see.

3 THE COURT: All right.

4 MR. THOMASCH: And Mr. Strapp has been
5 accommodating.

6 THE COURT: That's fine. I don't mind taking
7 it out of order if you-all agree with that. That's
8 fine.

9 Did you-all just want to leave the injunction
10 issue, argument on that, to -- nobody wanted to put on
11 evidence. Did you want to just let me handle that on
12 the papers? It's already briefed.

13 MR. THOMASCH: We would prefer to have oral
14 argument.

15 THE COURT: I'll hear you tomorrow on that,
16 too.

17 MR. THOMASCH: We thought possibly, and I
18 haven't had a chance to speak with opposing counsel on
19 this, but instead of holding up witnesses in the
20 court, to get all the evidence in, as Your Honor has
21 repeatedly expressed is your preference, and then both
22 sides having preserved their 52(c) motions, to deal
23 with that issue, and possibly that and the injunction
24 together tomorrow will be wonderful from our
25 perspective.

1 THE COURT: I'd like to get it on the record
2 and see.

3 MR. STRAPP: Your Honor, in the January
4 order, you suggested you may want to have post-hearing
5 briefing, and you may want to have oral argument at
6 the end of April. I was wondering if you have any
7 preference now as to whether or not you want
8 post-hearing briefing and an oral argument the end of
9 April or whether --

10 THE COURT: I don't know, but I'd rather get
11 the witnesses under control before we deal with that,
12 if you don't mind. I haven't finished hearing
13 everything yet.

14 MR. STRAPP: All right.

15 THE COURT: Anything else?

16 MR. THOMASCH: There is only one open issue,
17 Your Honor, and that is --

18 THE COURT: No, there isn't. There's another
19 open issue that you need to remember, and that is you
20 have a motion you want to make under 52(c). I'll
21 consider that you have -- we'll hear it later.

22 MR. THOMASCH: Thank you, Your Honor.

23 THE COURT: So you don't waive anything by
24 going forward.

25 MR. THOMASCH: I very much appreciate that.

1 And there is one additional matter if I may
2 raise it with the Court.

3 THE COURT: Yes.

4 MR. THOMASCH: And this one may fall into
5 catagory of housekeeping, Your Honor. I don't know
6 yet. But last night when we were otherwise occupied,
7 we received notice from ePlus that they wished to
8 delete certain of their designations of the Hager
9 transcript. And they gave us yesterday evening a line
10 listing of those portions of their prior designations
11 that we wish to delete.

12 It is untimely, but we don't object to them
13 deleting if they wish other than we would like to make
14 sure that we can not only keep our fairness
15 designations, but cross designate because we want the
16 Court to have Mr. Hager's testimony and to see
17 Mr. Hager testify. And I don't want the video reduced
18 down and submitted to the Court until we've had a
19 chance to review what they have taken out.

20 THE COURT: You can't review the video anyway
21 until I rule on the objections.

22 MR. THOMASCH: I understand. I mean review
23 the transcript of the designations. In other words,
24 what they designated originally we didn't cross
25 designate. They had already designated it.

1 THE COURT: I understand.

2 MR. THOMASCH: So we just want --

3 THE COURT: When do you want to do that?

4 MR. THOMASCH: Frankly --

5 THE COURT: Why didn't you do it last night?

6 MR. THOMASCH: I was the weak link in that
7 chain, Your Honor.

8 THE COURT: Trying to get some sleep, huh?

9 MR. THOMASCH: That actually didn't happen.

10 THE COURT: Okay. All right. You can work
11 something out how to handle that. You-all talk about
12 it and get it done and get it done right. They
13 changed the game on you. You're entitled to have the
14 time to sort it out.

15 All right. Your witness.

16 MS. ALBERT: EPlus calls Dr. Alfred Weaver.

17 MR. THOMASCH: Just for the record, Your
18 Honor, it will probably be appropriate for Lawson
19 Software, Inc., to rest on the issue of colorability.

20 THE COURT: All right. Reserving your
21 rights.

22 MR. THOMASCH: Yes, Your Honor.

23 THE COURT: And, of course, the record is
24 open respecting these 500 series exhibits.

25 THE CLERK: Do you want him resworn?

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1 THE COURT: No. Dr. Weaver, I remind you,
2 you're under the same oath which you took earlier in
3 these proceedings.

4 Thank you, Mr. Neal.

5 THE WITNESS: Yes, Your Honor.

6

7 ALBERT WEAVER, called by the Plaintiff, having
8 been duly sworn, testified as follows:

9

10 DIRECT EXAMINATION

11 BY MS. ALBERT:

12 Q Good morning, Dr. Weaver.

13 A Good morning, Ms. Albert.

14 Q We're now turning to the issue of infringement.

15 Do you have an opinion as to whether or not the
16 configurations having RQC can be used to infringe
17 Claim 26?

18 A Yes, I do.

19 Q What is your opinion?

20 A I believe that a user of a system containing RQC
21 would be able to perform all the steps of Claim 26.

22 Q Do you have any system demonstrations that
23 illustrate the use of the software configurations with
24 RQC to perform the steps of Claim 26?

25 A Yes, I have two.

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1 Q What was the system that you used for your
2 demonstrations?

3 A This was a demonstration system that was provided
4 by Lawson on a laptop. It included the infringing
5 systems and all of the modules therein except for EDI.
6 Then it also included a system using RQC. It also
7 contained the ability to record the user's
8 interactions with either of those systems.

9 THE COURT: Was this something Lawson
10 provided in discovery or something they provided to
11 customers or they did it for their own reason or
12 demonstrative or what is this? Do you have mind
13 filling that out a little more completely for me?

14 MS. ALBERT: Yes.

15 BY MS. ALBERT:

16 Q Dr. Weaver, are you familiar with whether or not
17 Lawson provided this demonstration system in discovery
18 to ePlus?

19 A Yes, they did.

20 Q Does Lawson utilize a similar demonstration system
21 for its business purposes?

22 A Yes, in their sales and marketing and training.

23 THE COURT: And what's the exhibit number on
24 that?

25 MS. ALBERT: Well, the we have exhibits for

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1 the videos. One is PX-1135 and the other is PX-1134.

2 THE COURT: Well, if there's a demonstration,
3 it ought to go in as a whole, I would think.

4 MS. ALBERT: We put in the demonstrations the
5 same way we did at trial with the screen capture of
6 the video. Not the laptop itself.

7 THE COURT: Well, I wasn't looking for a
8 laptop.

9 MS. ALBERT: Okay. We do have DVDs to
10 provide the Court.

11 THE COURT: That's what I was trying to say.

12 MS. ALBERT: Right.

13 THE COURT: DVD.

14 MS. ALBERT: Right.

15 BY MS. ALBERT:

16 Q Did you direct the preparation of the system
17 demonstrations?

18 A Yes, I did.

19 THE COURT: Wait a minute. I thought that
20 Lawson did the system demonstration. I thought this
21 is what came from Lawson.

22 Q Did Lawson provide to ePlus a laptop computer in
23 discovery that had the demonstration systems loaded on
24 it?

25 A Yes, the demonstration systems being the system

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1 using RSS and the system using RQC, but I was the one
2 who directed how it would be used to create the
3 demonstration I would like to show Your Honor today.

4 THE COURT: Thank you for that clarification.

5 Q Can you provide a high level summary of what we're
6 going to see in the first demonstration?

7 A In the first demonstration, we will see that a
8 user can use RQC in order to perform the first five
9 steps of Claim 26.

10 MS. ALBERT: And can we have Plaintiff's
11 Exhibit 1135, please.

12 Q Can you explain what you're doing, how you're
13 interacting with the computer as the video provides?

14 A Sure. We'll begin by play. We'll begin by
15 logging in to the Lawson system. Stop. This takes us
16 to the Lawson home. And in that left-hand navigation
17 bar under the white block, the first blue box or bar
18 underneath that is requisition self service. And the
19 one under that is requisition center. So I'm going to
20 click on requisition center to open that as a window
21 within the browser window that we have here.

22 THE COURT: Can you stop that a minute?

23 Is the print over on the left side in Lawson,
24 is that fuzzy to you all?

25 THE WITNESS: Yes, Your Honor.

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1 THE COURT: It is? I was concerned. I've
2 had some eye surgery and I was checking to make sure
3 whether it worked or not.

4 THE CLERK: Our IT department was aware of
5 this problem. They discussed it. It's a problem with
6 what they're sending to us. It's not showing the
7 whole document. Isn't that correct?

8 THE COURT: It's more than that. I can't
9 read it. I'm asking if it's fuzzy. I can't read the
10 words.

11 The word "Lawson" is overlapped, that is
12 there's some gray tinge on each side of the letters,
13 and then there's the word -- I guess that's "home" up
14 there, isn't it?

15 THE WITNESS: Yes, Your Honor, it is.

16 THE COURT: I can barely make that out.

17 Is that the same -- is that extant on your
18 screens as well or is it just mine?

19 MS. ALBERT: It's a little bit fuzzy on this
20 screen as well.

21 THE COURT: It's more than a little bit fuzzy
22 no matter what I do with it.

23 All right. Go ahead.

24 A Your Honor, let me reorient us. On this left-hand
25 navigation bar, this link says "requisition self

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1 service." That's the older infringing system that we
2 discussed at trial.

3 Underneath that is a link to "requisition
4 center." And that's the one that I'm going to click
5 in order to launch that demonstration of RQC.

6 THE COURT: You're clicking "requisition
7 center"?

8 THE WITNESS: That's right, Your Honor.
9 A Play. It takes a minute to load. Stop.

10 MR. THOMASCH: Your Honor, may I note for the
11 record I was trying to confirm, this demonstration is
12 disclosed in the expert report as a demonstration for
13 Claim 28, not Claim 26. Claim 28 is no longer at
14 issue by order of the Court and we would object on
15 those grounds.

16 MS. ALBERT: That's correct, Your Honor, but
17 the first five elements of Claim 26 are the same as
18 the first five elements of Claim 28. So this video is
19 equally relevant to show how the system can perform
20 those steps of Claim 26.

21 And one of the reasons that we would like to
22 show this is because the demonstration system produced
23 by Lawson did not include the EDI module. We wanted
24 to be able to demonstrate the infringement of Claim 26
25 with components of the system other than showing the

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1 Punchout capabilities, and this does that. So it is
2 relevant to the issues in this proceeding. And we had
3 asked Lawson to produce the demonstration system with
4 the EDI module.

5 They had represented that they would do so,
6 but then when it was produced, it did not include the
7 EDI module. So we would have been able to show you
8 all six elements of Claim 26 with the components that
9 we're demonstrating currently plus EDI.

10 Then we have a second demonstration that
11 shows Punchout. So I think it is relevant to the
12 issues in this proceeding.

13 THE COURT: And they agreed to provide one
14 with EDI and then didn't?

15 MS. ALBERT: That's correct, Your Honor. I
16 mean, I have the correspondence if you wanted to see
17 it.

18 THE COURT: No. I don't think I need it.

19 MR. THOMASCH: May I see it?

20 THE COURT: Mr. Thomasch may want to see it.

21 MS. ALBERT: Yes.

22 THE COURT: I don't need it up here.

23 MS. ALBERT: Here I could show you Claim 26
24 and 28 side by side.

25 THE COURT: The first five elements of 28 are

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1 the same as the first five in 26.

2 MS. ALBERT: That's what this demonstration
3 is showing.

4 THE COURT: I see.

5 MS. ALBERT: The first five elements of Claim
6 26.

7 MR. THOMASCH: May I see the correspondence?

8 MS. ALBERT: Yes, you may.

9 If you would note, in our July 1 letter, at
10 page 4.

11 MR. THOMASCH: Your Honor --

12 THE COURT: You're talking to Mr. Thomasch?

13 MS. ALBERT: Yes.

14 THE COURT: She was talking to you, I think.

15 MR. KREVITT: Okay.

16 THE COURT: Do you object to her talking to
17 you?

18 MR. THOMASCH: It's unusual, but I do not
19 object.

20 MS. ALBERT: I was just going to note that we
21 had asked for a full demonstration system with all of
22 the components of the infringing configurations plus
23 requisition center.

24 MR. THOMASCH: And, Your Honor, I frankly
25 can't speak to that. These letters are dated -- the

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1 letter that was just made reference to is dated July 1
2 of 2011, more than three months before the motion for
3 an order to show cause took place. It almost sounded
4 like we've had a Rule 26 discovery dispute ruling
5 here, which would be an unusual thing to come up
6 during the cross-examination of a witness.

7 This is three months before there was even an
8 allegation of contempt made.

9 THE COURT: Oh, I don't think so. I think
10 those letters, it was the run-up to all this. I was
11 inundated and treated to all this.

12 MR. THOMASCH: You are correct, Your Honor.
13 It was a run-up where we were trying to show them why
14 we thought it was not infringing. They wanted some
15 information about it. But if there was a need for an
16 additional video, when the case was brought we
17 produced 2 million pages of documents by my
18 recollection. We had 20-some odd 30(b)(6) notices.

19 THE COURT: Excuse me. I guess the basic
20 point is that this wasn't asked for in discovery and
21 it wasn't that they --

22 MR. THOMASCH: I don't think this is an
23 appropriate point to do a discovery dispute.

24 THE COURT: Oh, it comes up all the time in
25 witness's testimony.

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1 MR. THOMASCH: I will say I was not on notice
2 of that, Your Honor. What I am on notice of is the
3 expert witness report which identifies this as
4 evidence in support of Claim 28, not Claim 26. And at
5 some point it does seem to me the Court has been
6 fastidious about making certain that the expert
7 discloses in the right section of their report, puts
8 opposing counsel on notice as to what the evidence is
9 they're citing and what they're citing it for.

10 We're not calling our expert in this phase of
11 the case based on rulings made by the Court. I don't
12 think that it's appropriate to just say, Well, this
13 evidence which is in for Claim 28 is also relevant to
14 another claim. We just didn't mention that in our
15 report.

16 MS. ALBERT: Well, Dr. Weaver has articulated
17 opinions going to the item master component, the PO
18 component, the RQ component, and the EDI module as
19 being the basis for his opinions on infringement.

20 THE COURT: When you disclosed your evidence
21 you were going to use in this case in this part of the
22 case, did you disclose this to the other side?

23 MS. ALBERT: Yes. We produced this video
24 with Dr. Weaver's report. We put this video on the
25 exhibit list.

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1 THE COURT: Was there any objection to it?

2 MS. ALBERT: There was an objection, yes.

3 THE COURT: What was the objection?

4 MS. ALBERT: Relevance.

5 MR. THOMASCH: There was an objection to
6 relevance because in the report it is cited to as a
7 video of the demonstration of Claim 28, which is no
8 longer in the case.

9 THE COURT: Anything else?

10 MS. ALBERT: I have nothing else.

11 THE COURT: How are you prejudiced if this
12 comes in given that it's not talking about Claim 28,
13 it's talking about Claim 26 and the same five elements
14 of each? How are you prejudiced by that? It looks to
15 me like it's the same thing. It may be elevating form
16 over substance to sustain your objection, which I
17 don't like to do.

18 MR. THOMASCH: I respect that, Your Honor.
19 They are the same five elements. I don't think that
20 the video was properly disclosed.

21 I do think that the rules here have been
22 strict. This is a suggestion that having lost our
23 expert, we should not face -- it is on their own
24 exhibit list as identified as being relevant to Claim
25 28 of the patent. That's what their list that they

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1 filed with the Court says.

2 Your Honor is correct. The first --

3 THE COURT: Claim 28? Why would they do
4 that? That wasn't in the case when the exhibit list
5 was filed. Somebody got the wrong list, I think. I
6 mean, according to what she said.

7 MR. THOMASCH: This was filed on March 12,
8 2013. I believe what happened was after March 12,
9 2013, an amended list was filed. And then they
10 switched it to say relevant to something else, but the
11 expert reports, of course, had been locked down, and
12 those had it down as a Claim 28 evidence.

13 MS. ALBERT: Yeah, we amended the exhibit
14 list and we said it was RQC demonstration regarding
15 item master requisitioning.

16 MR. THOMASCH: Your Honor, the bigger issue
17 here, obviously, is we believe this video and this
18 testimony captures a different theory of the
19 infringement that was used against RSS. And so by
20 definition we will object to all demonstrations. This
21 one there's an additional ground that the report
22 doesn't disclose it. But it is the change in the
23 theory of infringement that does most prejudice us and
24 is the reason I stand and object. Because if it was
25 the same theory, I wouldn't care.

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1 THE COURT: Thank you. I don't think there's
2 a change in the theory of infringement. They're
3 arguing that there's an infringement by a different
4 product. But in any event, you haven't been
5 prejudiced insofar as the first five elements of Claim
6 26 are concerned, and there was an amended witness
7 list that had that on there.

8 The objection is overruled provided that the
9 testimony must be confined and the demonstration must
10 be confined to the first five elements of Claim 26,
11 which are listed in this demonstrative as the first
12 five elements of Claim 28 and correctly so. So I
13 don't see there's been any prejudice.

14 I don't think there's been an offense of the
15 rules on expert disclosures. It's a consequence of
16 the changing groundwork of the case as to which
17 reasonable notice was given. The changing groundwork
18 is that during the course of discovery in this case,
19 the Federal Circuit changed made some decisions that
20 changed what we're litigating.

21 All right. And you have your objections
22 overruled. You may go ahead.

23 BY MS. ALBERT:

24 Q Can you continue, Dr. Weaver?

25 A Sure. So, Your Honor, what we have here is the

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1 pop-up, the browser window within a browser that
2 represents the requisition center interface.

3 So, Your, Honor I know it's fuzzy, but up here at
4 the top in this navigation bar there are some choices.
5 And this one that is admittedly very hard to say see
6 says, "Find/shop."

7 So I'm going to click on that and that will open a
8 drop-down menu. And at the bottom of that menu will
9 be a choice of searching by categories. And that's
10 what I'm going to click on.

11 Play. Stop. So what I've done now is I've begun
12 to select the product catalogs to search. This is
13 done using the catagory hierarchy tree. And, Your
14 Honor, you'll remember from the trial lots of
15 discussions about the --

16 THE COURT: Let's don't talk about the trial.
17 Just tell me what you're doing.

18 THE WITNESS: Yes, sir.

19 A What we're seeing here are some top level
20 elements, listings that come from the UNSPSC codes.
21 This first one is about live plants. That's not what
22 I'm going to choose. What I'm going to do is scroll
23 down until we get to a catagory that's related to
24 computers.

25 Play Stop. Well, I clicked on "communications and

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1 computing equipment." It's not worth going back to
2 see that. That takes me to the second level of the
3 hierarchy tree. And this one says, "Hardware and
4 accessories." So I'm going to click on that and go to
5 a third level.

6 Play. Stop. So now there are two choices at the
7 third level. The top one is computers. That's the
8 one I'm going to choose. So I'll click on that.

9 MR. THOMASCH: Your Honor, I'm sorry to
10 interrupt. We're actually having some difficulty
11 following the demonstrative.

12 THE COURT: Because it's fuzzy? Is that what
13 you're talking about or something else?

14 MR. THOMASCH: No, simply -- I'm having
15 trouble reading it, and I'm not certain, and I may
16 have missed it. I'm not certain whether he says he's
17 in Punchout or item master. And I can't read what's
18 happening here.

19 MS. ALBERT: He said he selected the
20 selection for categories.

21 MR. THOMASCH: He's in RQC for categories.
22 Okay.

23 THE COURT: Let me ask you something. Who
24 talked to the IT people? Let's go off the record.

25 (Discussion off the record.)

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1 THE COURT: We're on the record now. Lawson
2 object ed because they can't see the demonstration
3 because it is fuzzy and it is fuzzy. It's hard to
4 follow. And that's difficult for Mr. Thomasch to
5 prepare or to deal with his cross-examination, even
6 though I'm sure he's prepared some. Nonetheless, he's
7 got to be able to deal with what happens in the
8 courtroom.

9 So off the record you agreed, ePlus, to
10 provide screen shots and to use this testimony with
11 screen shots.

12 Is that what we're going to do?

13 MR. STRAPP: Your Honor, could we --

14 THE COURT: How long does it take to get
15 screen shots?

16 MR. STRAPP: We're trying to figure that out
17 right now. We're going to do it as fast as we
18 possibly can, and we'll bring them to the court as
19 soon as they are printed.

20 Would it be possible to proceed with the
21 video and provide the screen shots afterwards?

22 THE COURT: Well, I think that impairs his
23 ability to cross-examine.

24 MR. THOMASCH: I think the problem is, in
25 effect, counsel and the witness know where this is

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1 going to go and I don't.

2 THE COURT: I understand.

3 MR. THOMASCH: I'm okay to do it without the
4 demonstration and then have these come in after the
5 fact. You've admitted it in evidence. I'm not trying
6 to keep it out, but I would like to be able to read
7 it.

8 THE COURT: I understand.

9 MR. STRAPP: So can we proceed without the
10 video then?

11 THE COURT: Upon his agreement we can.

12 MR. THOMASCH: I agree.

13 THE COURT: He's agreed to it. And I'll try
14 to follow it as best I can. So will he.

15 I want you to rush that screen production, if
16 you will.

17 MR. STRAPP: Absolutely.

18 MS. ALBERT: Is there any reason to try the
19 second video to see if that's any clearer?

20 THE COURT: Can you understand the second
21 video better than the first one?

22 MS. ALBERT: I haven't seen it on the
23 courtroom system. So I'm not sure.

24 Would it be possible perhaps to recess Dr.
25 Weaver and call a different witness?

1 THE COURT: Yeah, we can do that. It will
2 make it easier for Mr. Thomasch. I want him to be
3 able to cross-examine, and I want to be able to follow
4 it. It's a legitimate position created by some
5 technological problems. We'll solve it that way.

6 Dr. Weaver, you can kind of just leave that
7 stuff up there. You don't have to be hauling it
8 around.

9 THE WITNESS: Thank you, Your Honor.

10 (The witness was excused from the witness
11 stand.)

12 MS. ALBERT: EPlus calls Keith Lohkamp.

13 THE COURT: Mr. Lohkamp, I remind you, you're
14 under the same oath which you took earlier in these
15 proceedings.

16 THE WITNESS: Yes, Your Honor.

17

18 KEITH LOHKAMP, called by the Plaintiff, having
19 been duly sworn, testified as follows:

20

21 DIRECT EXAMINATION

22 BY MS. ALBERT:

23 Q Good morning, Mr. Lohkamp.

24 A Good morning, Ms. Albert.

25 Q The item master of systems having requisition

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1 center continues to be able to maintain data
2 associated with items of multiple different vendors,
3 correct?

4 A Correct.

5 Q If a user using Lawson S3 procurement system
6 including RQC searches the item master, that user can
7 select multiple items for inclusion in the requisition
8 that could be purchased from multiple different
9 vendors, correct?

10 A Yes.

11 MR. LO: Your Honor, we object to the form of
12 the question insofar as Ms. Albert is reading lay
13 terms from the patent, insofar as there's no
14 foundation that Mr. Lohkamp has read Your Honor's
15 claim constructions and understands it and is giving
16 testimony in compliance with the Court's claim
17 construction.

18 MS. ALBERT: I'm not reading claim terms from
19 the patent. I'm using terms that are used in
20 connection with the operation of the Lawson
21 procurement systems.

22 THE COURT: Overruled.

23 MS. ALBERT: Did I have a question pending?
24 Did he answer? I'll ask it again.

25 THE COURT: Ask it again.

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1 Q If a user using Lawson S3 procurement system
2 including RQC searches the item master, that user can
3 select multiple items for inclusion in a requisition
4 that can be purchased from multiple different vendors,
5 correct?

6 A Yes.

7 Q Assuming you conduct a search of the item master
8 using requisition center and select an item master
9 item associated with vendor A and an item master item
10 associated with vendor B and place both of those items
11 in a single requisition, when you click "release," the
12 purchase order module will generate two purchase
13 orders, one to vendor A and one to vender B, correct?

14 A Yes.

15 Q With respect to Lawson procurement systems that
16 include the requisition center application and the
17 Procurement Punchout application, a user of such a
18 system can have business relationships with multiple
19 Punchout vendors, correct?

20 A Could you repeat the question?

21 Q With respect to a Lawson procurement system that
22 includes RQC and Procurement Punchout, a user of such
23 a system can have business relationships with multiple
24 Punchout vendors, correct?

25 A Yes.

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1 Q And Lawson made no changes to a system that would
2 have the core procurement suite, requisition center
3 and Punchout with respect to disallowing such a system
4 from connecting to multiple different Punchout sites,
5 correct?

6 A Correct.

7 Q When a user of a system having the core
8 procurement suite, requisition center and Procurement
9 Punchout clicks on the find/shop drop down menu, there
10 would be a Punchout option available on that menu,
11 correct?

12 A If the user has access to Punchout.

13 Q Assuming the system user has business
14 relationships with Dell and Staples, for example, when
15 the system user clicks that find/shop drop down menu
16 and clicks "Punchout" as the option, the system will
17 then display an icon for the Dell Punchout site as
18 well as an icon for the Staples Punchout site,
19 correct?

20 A Yes, if the user has access to those sites.

21 Q The system can be connected to both of those
22 different catalogs, correct?

23 A Yes, to both those websites.

24 Q In fact, there are some Punchout websites that are
25 multi vendor Punchout sites, correct?

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1 A Yes.

2 Q One example would be SciQuest, correct?

3 A Yes.

4 Q Another example would be GHX, Global Healthcare
5 Exchange; is that correct?

6 A Yes.

7 Q Another example of a multiple vendor Punchout site
8 is Perfect Commerce, correct?

9 A Yes.

10 Q You're aware that there are customers of Lawson
11 that maintain connections to the SciQuest Punchout
12 site, correct.

13 A Yes.

14 Q Now, with respect to a Punchout shopping session
15 at the SciQuest site, if a user selects from multiple
16 different vendors during that Punchout shopping
17 session at the SciQuest site, those items are returned
18 back to the Lawson system to the right-hand side of
19 the user interface of requisition center, correct?

20 A That is my understanding of the SciQuest
21 functionality.

22 Q Once the user clicks "release," that requisition
23 will be released, correct?

24 A Yes.

25 Q Assuming my requisition with the line item from

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1 vendor A and a line item from vend B was approved and
2 my system has a purchase order module, the purchase
3 order module will generate a purchase order from my
4 line item that I want to purchase from vendor A and
5 that a second purchase order from the line item from
6 vendor B, correct?

7 A Correct.

8 Q Now, Lawson performs demonstrations of its
9 requisition center systems for its customers, correct?

10 A Yes.

11 Q And you've participated in meetings with customers
12 where Lawson has demonstrated the features and
13 functionality of a system with requisition center,
14 correct?

15 A Yes.

16 Q For example, Lawson demonstrated its requisition
17 center systems at the west coast healthcare summit
18 meeting that you attended, correct?

19 A I believe we showed a PowerPoint of it.

20 THE COURT: So the answer is yes?

21 THE WITNESS: Yes.

22 Q Now, a download of a product does not render that
23 product operational, does it?

24 A No, it does not.

25 Q A product needs to be installed in order to

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1 execute; isn't that correct?

2 A Yes, it does.

3 Q A download of requisition center isn't the same as
4 an installation of requisition center, correct?

5 A Correct.

6 Q So a simple download of requisition center without
7 any further actions would not change a customer's
8 system configuration, correct?

9 A They would need to install that to use it.

10 Q Thank you.

11 Let me have you look at Plaintiff's Exhibit 1113
12 in your book. As indicated on the first page on the
13 email chain on June 3, 2011, you forwarded the slides
14 attached to this email to Dale Christopherson; is that
15 correct?

16 A Correct.

17 Q Let's turn to --

18 MS. ALBERT: I would move the admission of
19 Plaintiff's Exhibit 1113 into evidence.

20 THE COURT: Any objection?

21 MR. LO: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Plaintiff's Exhibit 1113 is admitted.)

24 Q Turn to page RQC 883192. The attachment to the
25 email is a slide presentation entitled, Introducing

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1 Lawson requisition center from a webinar that Lawson
2 presented on June 3, 2011; is that correct?

3 A That's correct.

4 Q This webinar was presented to Lawson's customers;
5 is that correct?

6 A Yes.

7 Q You were the primary compiler of the slides in
8 this presentation; is that correct?

9 A Yes, and in conjunction with Jennifer Langer.

10 Q And you authored some of the slides in this
11 presentation and got input from others, correct?

12 A Yes.

13 Q Why don't you turn to page RQC 883193. I'm sorry.
14 196. Do you see under the heading "The Court Order,"
15 the second bullet states, "Lawson is ordered to no
16 longer provide support to RSS; however, customers are
17 not ordered to stop running RSS." Do you see that?

18 A Yes.

19 Q Now, systems that included RSS were the subject of
20 the Court's injunction order, correct?

21 A To my understanding, yes.

22 Q You're aware, aren't you, that the Court's
23 injunction order prohibited Lawson from circulating,
24 publishing or disseminating within the United States
25 any literature or information that encourages the use

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1 of the infringing systems, correct?

2 A I'm not sure if that's the exact word or not.

3 Q But do you have that understanding that Lawson was
4 prohibited from circulating literature that encourages
5 use of RSS?

6 A That was my understanding.

7 Q Thank you.

8 Can you turn to Plaintiff's Exhibit 1105? Do you
9 see on this page a June 3 email from Kim Ross to you?

10 A Yes.

11 Q In that email, she states, "Hi. The transcript of
12 questions from the webinar is attached." Do you see
13 that?

14 A Yes, I do.

15 THE COURT: I'm sorry. What page is that?

16 MS. ALBERT: The first page of 1105, PX-1105.

17 THE COURT: Yes. Okay.

18 Q The attachment to this email is the transcript of
19 questions from the June 3 Lawson customer webinar on
20 requisition center; is that correct?

21 A It appears to be so.

22 Q And you received a copy of the attached
23 transcript: is that correct?

24 A That is correct.

25 Q The questions and answers that are included in the

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1 attachment are the questions and answers that were
2 taken during the course of Lawson's June 3, 2012
3 webinar presented to its customers concerning
4 requisition center; is that correct?

5 A Yes.

6 Q These questions and answers were made available to
7 the public subsequent to the webinar on the
8 MyLawson.com website; is that correct?

9 A Well, the final copy after we reviewed the
10 questions and put together answers had all that
11 reviewed by legal with input from different teams. We
12 published then a final version of Q and A to the
13 customers.

14 THE COURT: Is that this?

15 THE WITNESS: That's not this.

16 THE COURT: What?

17 THE WITNESS: That's not this. This is the
18 raw Q and A question and answer coming from the WebEx.
19 Then we took this and created a final document that we
20 shared back.

21 Q And the final document was posted on the
22 MyLawson.com website; is that correct?

23 A That's correct.

24 Q And Lawson's customers, partners and employees
25 have access to MyLawson.com; is that correct?

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1 A That is correct.

2 Q Were live answers to the customers' questions
3 given during the course of the webinar?

4 A Yes, there were.

5 Q Were you one of the persons answering the
6 questions during the course of the webinar?

7 A Yes, I was.

8 Q Why don't you look at page RQC 869067. Do you see
9 on that page the third question from the bottom from
10 Sharon Ewing? Do you see that question?

11 A Yes.

12 Q Sharon Ewing asks, "Other than changing the RSS
13 bookmarks, nothing else will be required for the
14 existing RSS to continue to run; is that correct?" Do
15 you see that?

16 A Yes, I see that.

17 Q And the answer to the question provided by
18 Jennifer Langer of Lawson is, "Correct." Is that
19 accurate?

20 A That's what -- that's accurate, yes.

21 Q The customer is asking about things that need to
22 be changed in order for the existing requisition self
23 service to continue to run, correct?

24 A Correct.

25 Q Why don't you turn to page RQC 869072. In the

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1 middle of the page there's a question from a

2 Mr. Wacarkhan (phonetic). Do you see that?

3 A Yes.

4 Q And he asks, "What about if we want to run RSS and

5 RQC side by side?" Do you see that question?

6 A Yes.

7 Q And how did Jennifer Langer of Lawson answer that

8 question?

9 A She answered, "Designed to run in parallel with
10 only changes to the RSS bookmarks.

11 Q Turn to page --

12 THE COURT: What does "run in parallel" mean?

13 THE WITNESS: It means that for some of our
14 customers who may want to be testing both RQC and RSS,
15 they basically can be running RSS and install RQC and
16 be able to test that before they go live. In this
17 case this was --

18 THE COURT: I think you're going beyond what
19 I asked. I mean what does it mean to run it parallel.
20 Not why you run in parallel. I want to know what it
21 means to run it parallel.

22 THE WITNESS: It means that a user could
23 access requisition center so someone could access
24 requisition center and run that and then also have
25 requisition self service and be able to access that

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1 and access the functions in requisition self service.

2 THE COURT: So if you have RSS and you get
3 RQC, you can continue to run RSS and also run RQC?

4 THE WITNESS: It is technically possible,
5 yes.

6 THE COURT: Well, is there anything that
7 Lawson has done to keep that from happening
8 technologically?

9 THE WITNESS: Technologically, when you
10 install requisition center, it basically changes the
11 bookmarks to the end users so the end users are now
12 pointed to requisition center. A customer would have
13 to go and modify that to undo that change.

14 THE COURT: By changing the bookmarks in RSS?

15 THE WITNESS: Correct.

16 THE COURT: And then could you continue to
17 run both systems in parallel?

18 THE WITNESS: If you had not uninstalled RSS,
19 yes.

20 THE COURT: What?

21 THE WITNESS: If you had not uninstalled RSS.

22 THE COURT: If you had not uninstalled RQC?

23 THE WITNESS: Uninstalled RSS.

24 Q And Lawson in the course of this customer webinar
25 was providing instructions to its customers for how to

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1 change the bookmarks so they would be able to access
2 RSS to continue to run, correct?

3 A We'd provide some guidance on it.

4 Q Turn to page RQC 869068. Refer to the second
5 question from the top on that page from Grant Brown at
6 WLSSD.com. Do you see that?

7 A Yes.

8 Q And WLSSD is a reference to Western Lake Superior
9 Sanitary District; is that correct?

10 A I'm not sure.

11 THE COURT: Excuse me. What page are you on?

12 MS. ALBERT: RQC 869068. The question from
13 Grant Brown.

14 THE COURT: All right.

15 Go ahead.

16 Q Western Lake Superior Sanitary District was not
17 one of the 277 healthcare customers who had the sunset
18 provision under the injunction, was it?

19 A Not to my knowledge.

20 Q Mr. Brown asked, "Are there any known/or possible
21 issues when multiple users are using RSS and others
22 are using RQC at the same time? Are they all balanced
23 on the same databases?" Do you see that question?

24 A Yes, I do.

25 Q How did Jennifer Langer of Lawson respond?

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1 A "Designed to work this way."

2 Q So Lawson told its customers that requisition self
3 service and requisition center were designed to allow
4 multiple users to use the two applications
5 simultaneously; is that correct?

6 A Jennifer said, "It was designed to work this way."

7 MS. ALBERT: Thank you. Nothing further.

8

9 CROSS-EXAMINATION

10 BY MR. LO:

11 Q Good morning, Mr. Lohkamp.

12 A Good morning. Mr. Lo.

13 Q What you were just shown -- let's go to the last
14 exhibit. Were the answers provided in that document
15 the final answers provided to Lawson customers?

16 A No, they weren't.

17 Q Let me ask you to take a look at what's been
18 marked as Plaintiff's 1002.

19 MR. LO: Your Honor, while we a grab that
20 exhibit, perhaps I should go to the next question so
21 we save the Court some time.

22 THE COURT: All right.

23 Q Mr. Lohkamp, you were asked by counsel for ePlus
24 about issues regarding running RSS and RQC in
25 parallel. When RQC is installed, what happens to the

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1 user's ability to access RSS?

2 A When RQC is installed, the bookmarks change and
3 the users who previously had access to RSS are
4 directed via the bookmarks to RQC.

5 Q Does the installation program for RQC give users
6 the option of keeping the RSS bookmarks?

7 A No.

8 THE COURT: I thought you just told me they
9 could change the bookmarks on RSS and run them both in
10 parallel.

11 THE WITNESS: The installation program does
12 not allow it afterwards.

13 THE COURT: You mean, the installation
14 program does not teach it? It doesn't do it, but you
15 can do it if you know to do it; is that right or
16 wrong?

17 THE WITNESS: No. The installation program
18 that we provide does that. That basically changes the
19 bookmarks after the fact. The customer could go in
20 and rename some things, bookmarks.

21 THE COURT: I guess I need to get straight
22 once and for all, if you had RSS, then you get RQC,
23 you get it installed, do you have the capability, if
24 I'm the customer, to change the bookmarks on RSS and
25 then run them both at the same time?

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1 THE WITNESS: Yes.

2 THE COURT: And can if I were a customer of
3 Lawson running RSS in June of 2011, do I still have
4 that capacity if I have RSS and RQC today?

5 THE WITNESS: Yes, you have that capability
6 to change the bookmarks.

7 THE COURT: All right. And I can run them
8 both in parallel?

9 THE WITNESS: Yes.

10 Q Mr. Lohkamp, the change that the Judge asked you
11 about, who would have to make that change?

12 A The customer.

13 Q Does Lawson provide any software in the
14 installation program that otherwise does that change
15 for the customer to your knowledge?

16 A Not to my knowledge.

17 Q Does the typical end user of Lawson software can
18 that end user easily change the bookmarks as you've
19 just described to Judge Payne?

20 MS. ALBERT: Lack of foundation.

21 Q Mr. Lohkamp, do you know whether a typical user of
22 Lawson software would have the capability, the right
23 to change the bookmark as Judge Payne has just asked
24 you about?

25 THE COURT: The right?

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1 MR. LO: Yes.

2 THE COURT: The legal right? Is that what
3 you're talking about?

4 MR. LO: No, Your Honor. Let me rephrase my
5 question.

6 THE COURT: All right.

7 Q Mr. Lohkamp, are you aware of whether different
8 users of Lawson software might have different
9 administrative rights within the software?

10 A Yes.

11 THE COURT: I don't know what administrative
12 rights means, Mr. Lo. Can you help me?

13 MR. LO: Yes.

14 Q Would you please explain what it means to have
15 administrative rights within the software?

16 A Different users who have access to the Lawson
17 system have access to different functions. And a user
18 that has administrative rights has a greater ability
19 to make changes to the system including configuration.

20 THE COURT: Like the fellow here at the
21 courthouse who goes into my computer and logs in as
22 administrator, he can do a lot of things that I can't
23 do. Is that the same thing?

24 THE WITNESS: Yes. Exactly.

25 THE COURT: Okay, I understand.

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1 Q Why is it that different levels of administration
2 are given with these types of procurement software?

3 A Really to control who has access to do what. So
4 requesters are usually just limited to being able to
5 order and use requisition. The administrator has the
6 ability to make changes into the configuration of the
7 software typically.

8 Q And when we're talking about using the Lawson
9 procurement software to make purchases, is it to your
10 knowledge either usually the requester or the
11 administrator that conduct those tasks?

12 A It's typically the requester that performs the
13 task of ordering items.

14 Q Do the requesters using Lawson software typically
15 have the administrative right to change the bookmarks
16 as Judge Payne was asking you about?

17 A Typically, no.

18 Q You were asked a series of questions by ePlus's
19 counsel regarding the vendor SciQuest. Do you recall
20 that?

21 A Yes.

22 Q Is SciQuest a specific site that all SciQuest --
23 all customers who access SciQuest see the same thing
24 or is it customized for each particular customer that
25 might access SciQuest?

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1 MS. ALBERT: Lack of foundation.

2 THE COURT: What do you say about her
3 objection?

4 MR. LO: Your Honor, my question actually
5 asked him whether he knew the answer to that question.

6 THE COURT: So the answer is yes or no. Do
7 you know? Do you want it again?

8 THE WITNESS: Yes.

9 THE COURT: Give him the question again.

10 Q Sure. Mr. Lohkamp, are you aware of whether all
11 users who access SciQuest are looking at the same site
12 with the same items and the same pricing or are there
13 variations depending on which customer is accessing
14 SciQuest at a particular moment?

15 MS. ALBERT: Lack of you foundation. I don't
16 know how he can possibly know about all users.

17 THE COURT: I don't either, but I think
18 that's the question. I don't know if there are two
19 users or one or 5,550.

20 Do you know what all of them do?

21 THE WITNESS: I don't know what all of them.

22

23 THE COURT: All right. Thank you.

24 Q Do you whether there is variation among what users
25 see when they access SciQuest?

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1 A Yes.

2 Q Is there?

3 A To my understanding, yes.

4 Q Yes, meaning there --

5 A There are variations.

6 Q What types of variations are there?

7 A My understanding is that SciQuest can put
8 different products, make those available for a
9 particular customer, as well as different prices.

10 Q Do you have personal knowledge of whether Lawson
11 customers actually use SciQuest to order items from
12 multiple vendors on the same requisition? Do you have
13 personal knowledge of that fact one way or the other?

14 THE COURT: You can walk up there. You don't
15 have to creep up.

16 MS. ALBERT: Objection. I believe I asked
17 him the same question on my examination and he's
18 already answered it.

19 MR. LO: No, Your Honor. I think the
20 question on direct examination was whether it's
21 capable, and now I'm asking Mr. Lohkamp whether he has
22 actual knowledge of that happening.

23 THE COURT: All right. Overruled.

24 A I don't know specifically how the customers have
25 used that.

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1 Q So you have no personal knowledge of that
2 happening; is that correct?

3 A That's correct.

4 THE COURT: He doesn't know one way or the
5 other. He doesn't know either way. Is that what
6 you're saying? You don't know?

7 THE WITNESS: I don't know, yes.

8 Q How many customers to your knowledge, how many
9 Lawson customers to your knowledge use SciQuest as a
10 Punchout vendor?

11 THE COURT: Use SciQuest what?

12 MR. LO: SciQuest as a Punchout vendor.

13 A Approximately five or so.

14 Q For any of those five, do you have personal
15 knowledge as to what that set-up looks like for that
16 individual customer?

17 A No.

18 Q Now, earlier on -- would you turn to Plaintiff's
19 1105. And that was a document that plaintiff's
20 counsel placed in front of you earlier. And I'll ask
21 you to turn to the page that ends in RQC 068. And you
22 recall a series of questions regarding the question
23 asked by Mr. Grant Brown?

24 A Yes.

25 Q And are the answers provided in these documents,

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1 are they drafts or are they what was actually provided
2 in terms of final answers to the customers?

3 A These were answers that were provided in the Q and
4 A live but not in the final document.

5 Q To your knowledge did any Lawson customers obtain
6 a copy of what we're looking at in Plaintiff's 1105?

7 A Not to my knowledge.

8 Q Let me hand up to you what's been marked as
9 Plaintiff's 1002. What is Plaintiff's 1002?

10 A It appears to be the final copy of the requisition
11 center webinar Q and A answers.

12 THE COURT: It's the edited version, final
13 version, of 1105; is that what you're saying?

14 THE WITNESS: That's correct.

15 THE COURT: All right. Pardon. Go ahead.

16 MR. LO: Thank you, Your Honor.

17 Q Was Plaintiff's 1002 to your knowledge provided to
18 Lawson customers?

19 A Yes, to my knowledge.

20 Q And you recall earlier there were some questions
21 about multiple users using RSS and RQC, correct?

22 A Correct.

23 Q Let me direct your attention to the page that ends
24 in RQC 646. Do you see a section of that page that is
25 labeled as "Running Requisition Center in Parallel

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1 with Requisition Self Service"?

2 A Yes.

3 Q Now, let me direct your attention to the third row
4 down from there. And I'll read you -- and ask you to
5 read the left-hand column. It starts with "are there
6 any."

7 A Okay. "Are there any known or possible issues
8 when multiple users are using RSS and others are using
9 RQC at the same time? Are they all balanced on the
10 same data tables?"

11 Q What does that represent? What is that left-hand
12 column there that you just read?

13 A The left-hand column is the question that was
14 entered during the webinar.

15 Q Where is the answer to that question that was
16 provided to Lawson customers?

17 A The answer is in the next column over.

18 Q Would you read that, please?

19 A "There should not be any issues. The system
20 should behave similar to having multiple RSS users
21 using the system at the same time. Lawson will only
22 support RQC and customer will mitigate risks by moving
23 to RQC."

24 Q Was that to your knowledge the final answer that
25 was provided to Lawson customers as to that question?

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1 A Yes.

2 Q Let me direct your attention to the last row in
3 that particular section and ask you to read the
4 question that starts with "if a client."

5 A "If a client is running Punchout and wants to test
6 RQC while still using RSS, how will that work?"

7 Q And, again that's the question that was asked by
8 the customer, correct?

9 A Correct.

10 Q What was Lawson's final response to customers as
11 to that question?

12 A "Running RQC and RSS in parallel with Punchout
13 installed will work. However, both RSS and RQC will
14 need to be configured to interface with Punchout.
15 Customers are encouraged, however, to stop using RSS.
16 Lawson will only support RQC and customer will
17 mitigate risks by moving to RQC."

18 MR. LO: Thank you, Mr. Lohkamp.

19 THE WITNESS: You're welcome.

20 Q Well, Mr. Lohkamp, earlier on you were asked a
21 series of questions regarding the capability of RQC.
22 Do you recall that?

23 A Yes.

24 Q And you were posed a hypothetical example of a
25 user punching out to SciQuest and adding to the

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1 requisition items from SciQuest. Do you recall that
2 line of questioning?

3 A Yes, I do.

4 Q Using RQC, once a user has added an item to the
5 requisition from SciQuest, is it possible for the user
6 then to punch out to another site?

7 A No, it is not.

8 Q Once a user has added, again following ePlus's
9 counsel's hypothetical, in a situation where the user
10 has already added into the requisition something from
11 SciQuest, would it be possible for the user to access
12 item master?

13 A No, it would not.

14 Q And in that situation, would a user then be able
15 to search or add items from item master?

16 A No, they would not.

17 Q Mr. Lohkamp, have you read the '683 Patent?

18 A I've briefly read it.

19 Q Are you aware of what a Markman order is?

20 A No, I'm not.

21 Q Then I take it you haven't -- you're not aware of
22 whether Judge Payne has issued a Markman order in this
23 case, correct?

24 A That's correct.

25 Q And you would not have read any such order; is

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1 that correct?

2 A I would not have read it.

3 Q Let me ask you to turn to Plaintiff's 1113.

4 That's a document that was placed in front of you
5 earlier. Do you recall being asked questions with
6 respect to the page that ends in RQC 196?

7 A Yes.

8 Q You were asked a series of questions regarding the
9 provision of customer support by Lawson. Do you
10 recall that?

11 A Yes.

12 Q In your role at Lawson, what if anything do you
13 have to do with providing customer support?

14 A I do not provide commercial support.

15 Q Are you aware of the circumstances under which
16 Lawson did or did not provide customer support for
17 users of RQC or RSS?

18 A No, I'm not.

19 MR. LO: Thank you, Mr. Lohkamp. No further
20 questions.

21 MS. ALBERT: One housekeeping matter. I
22 wanted to move the admission of Plaintiff's Exhibit
23 1105 into evidence.

24 THE COURT: Any objection?

25 MR. LO: No objection, Your Honor.

1 THE COURT: It's admitted.

2 (Plaintiff's Exhibit 1105 is admitted.)

3

4 REDIRECT EXAMINATION

5 BY MS. ALBERT:

6 Q Now, Mr. Lohkamp, referring back to Plaintiff's
7 Exhibit 1105, let's look at the first page. Referring
8 to the bottom line on that page, beginning
9 "registration report," do you see that?

10 A Yes.

11 Q It says, "Wow, a 1049 people registered. I
12 believe we topped out at 870 online at one time." Do
13 you see that?

14 A Yes.

15 Q So during the course of the webinar, customers
16 were asking these questions live, correct?

17 A Live via the Q and A feature, yes.

18 THE COURT: There's something called a chat
19 box, you can type your question in and then the answer
20 come back on the chat box?

21 THE WITNESS: Correct. They would type in
22 the questions and then they could be answered through
23 typing back.

24 Q And Lawson was providing the answers live to the
25 customers, correct?

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1 A Yes.

2 THE COURT: So that means in the vernacular
3 that if you ask a question and they respond to it, and
4 I'm on the webinar, I can also see the question and
5 the answer; is that right?

6 THE WITNESS: So it depends upon how the
7 question is answered. The question can be answered
8 privately just to that individual or it can be
9 answered publicly. And so the feature doesn't show
10 all the questions to everyone, but when we answer
11 them, we could either answer them publicly or
12 privately. And I don't know how these answers were
13 done whether they were just to that questioner or
14 publicly.

15 THE COURT: Thank you.

16 BY MS. ALBERT:

17 Q In the course of the webinar, Lawson provided
18 instruction to its customers for how to change the
19 bookmarks so the customers could run RSS in parallel
20 with RQC, correct?

21 A Through the questions or in the presentation?

22 Q Through the questions and answers.

23 A Yes. From the questions it gave some guidance on
24 how the bookmarks would need to change.

25 Q If a system administrator sets up a system to run

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1 RQC and RSS in parallel, all users of the system can
2 run both applications, correct?

3 A It would depend upon if the users were provided
4 access to the system.

5 Q Assuming that the users had access rights to the
6 system and the system administrator set up the system
7 to run RQC and RSS in parallel, then the users of the
8 system would be able to run both applications,
9 correct?

10 A Assuming that the users were provided access to
11 both RQC and RSS.

12 Q Thank you. Turn to Plaintiff's Exhibit 1002 that
13 Mr. Lo referred you to.

14 THE COURT: Is 1002 in?

15 MS. ALBERT: I believe it's already admitted.

16 THE CLERK: Yes, sir.

17 MR. LO: That's my understanding as well.

18 THE COURT: All right. Thank you.

19 BY MS. ALBERT:

20 Q With reference to page RQC 646, Mr. Lo referred
21 you to a section of that page. Can you read what the
22 title of that entire section of questions and answers
23 is?

24 A Yes. It's running requisition center in parallel
25 with requisition self service.

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1 MS. ALBERT: Thank you. Nothing further.

2 THE COURT: All right. I have one question
3 for you, Mr. Lohkamp.

4 THE WITNESS: Yes.

5 THE COURT: I wrote down to ask yesterday and
6 didn't while you're here. To your knowledge, has
7 Lawson lost any customers who had RSS and who told you
8 that they were quitting Lawson because of the shift to
9 RQC?

10 THE WITNESS: I personally am not aware of
11 any.

12 THE COURT: All right. Thank you. Anybody
13 have any questions based on what I asked?

14 MS. ALBERT: No, Your Honor.

15 MR. LO: No, Your Honor.

16 THE COURT: Can he be permanently excused or
17 do you need him around?

18 MR. LO: We may recall him.

19 THE COURT: All right. Mr. Lohkamp, you're
20 temporarily excused. You may be recalled.

21 THE WITNESS: Thank you.

22 (The witness was excused from the witness
23 stand.)

24 MS. ALBERT: EPlus calls Scott Hanson.

25 THE COURT: Wait just a minute. I think we

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1 need to change court reporters.

2 We'll take a 20-minute recess at this time.

3 (Recess taken at 11:05 a.m.)

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1 MS. ALBERT: ePlus calls Scott Hanson to the
2 stand.

3 THE COURT: All right.

4

5 **SCOTT HANSON,**

6 a witness, called at the instance of the plaintiff,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. ALBERT:

10 Q Good morning, Mr. Hanson.

11 A Good morning.

12 Q In December of 2011 when you were deposed, you were
13 the practice director of technology --

14 THE COURT: Let's just get his name.

15 MS. ALBERT: Pardon me?

16 THE COURT: Your name.

17 Q Can you state your name for the record, please.

18 A Scott Hanson.

19 THE COURT: And will you spell the last name.

20 THE WITNESS: H-a-n-s-o-n.

21 THE COURT: All right. And you work with?

22 THE WITNESS: Infor, currently Infor.

23 THE COURT: And Infor was formerly?

24 THE WITNESS: Lawson.

25 Q In December 2011 when you were deposed in this matter,

1 you were the practice director of technology in the Lawson
2 consulting services organization; is that correct?

3 A That's correct.

4 Q What is your current position?

5 A Same position.

6 Q In that position, your responsibilities include
7 managing the set of technical and systems consultants that
8 perform installation and administrative activities for
9 Lawson clients; is that correct?

10 A That's correct.

11 Q Your responsibilities previously included oversight
12 responsibility for the requisition self-service
13 application; is that correct?

14 A Could you say your question again.

15 Q Your responsibilities previously included oversight
16 responsibility for the requisition self-service
17 application; is that correct?

18 A Installation activities of RSS or RQC, yes.

19 Q Thank you. And your responsibilities also included
20 oversight into the installation and implementation of the
21 procurement Punchout application; is that correct?

22 A Correct.

23 Q Your responsibilities also include oversight with
24 respect to the installation of the Requisition Center or
25 RQC application; is that correct?

1 A That's correct.

2 Q You were the head of Lawson's RQC SWAT team; correct?

3 A That's correct.

4 Q The RQC SWAT team was created at the end of May 2011
5 to assist Lawson customers in transitioning from RSS to
6 RQC; is that correct?

7 A That is correct.

8 Q The SWAT team's responsibilities involved answering
9 any questions that the customers may have had as well as
10 providing actual installation of the RQC product on their
11 system; is that correct?

12 A That's correct.

13 Q Now, I would like to discuss the process that's used
14 to install and integrate RQC into the core S3 procurement
15 system. The first step would be a customer would have to
16 download RQC; is that correct?

17 A That's correct.

18 Q The customer must then use the RQC install guide and
19 follow the steps in that guide to install the product; is
20 that correct?

21 A That is correct.

22 Q And Lawson provides the RQC install guides to its
23 customers for this instruction; is that correct?

24 A That is correct.

25 Q If a customer has both a test system and a production

1 system, there would be two different RQC installations
2 required, one to the test environment and one to the
3 production environment; is that right?

4 A That is correct.

5 Q And can you explain what a production system or
6 production environment is?

7 A The production system is the real or live systems
8 where actual requisitions are actually occurring.

9 Q After downloading, an installation system
10 configuration is also required; is that correct?

11 A Correct.

12 Q And the nature of tasks associated with configuration
13 includes determining and setting up PO companies, item
14 masters, item locations, and setting up the procurement
15 system; is that correct?

16 A In an implementation, yes, that's correct.

17 Q Configuration is required in order to render RQC fully
18 implemented following installation; is that correct?

19 A That's correct.

20 Q Other steps that are required for implementation
21 include doing end user training, applying security, and
22 setting up users as requisitioners; correct?

23 A Correct.

24 Q Now, prior to the injunction, Lawson had roughly 860
25 customers who had licensed RSS application; is that

1 correct?

2 A To my knowledge, yes.

3 Q As of December 2011, more than seven months after the
4 Court's injunction was entered, the RQC SWAT team had
5 communicated with about 240 customers about RQC issues; is
6 that correct?

7 A That is correct.

8 Q However, Lawson did not actually install RQC for those
9 240 clients; right?

10 A We would have installed RQC for a subset of those
11 clients.

12 Q So not the full 240; correct?

13 A That is correct.

14 Q As of the date of your deposition, December 29th,
15 2011, you did not know how many of these 240 clients
16 actually performed the installation of RQC for themselves,
17 did you?

18 A That is correct.

19 Q And with respect to the other 620 RSS customers that
20 the SWAT team did not communicate with, as of December of
21 2011, Lawson had no information as to the status of either
22 the RSS application or the RQC application; correct?

23 A I do not have that knowledge.

24 Q Well, is your understanding that Lawson had any
25 information as to the status of either the RSS application

1 or the RQC application with respect to the 620 RSS
2 customers that the SWAT team did not communicate with?

3 MR. MARK: Objection; foundation.

4 THE COURT: Overruled.

5 A Can you repeat the question?

6 Q With respect to the other 620 RSS customers that the
7 SWAT team had not communicated with as of December 2011,
8 Lawson had no information as to the status of either the
9 RSS application or the RQC application; correct?

10 A I do not have that knowledge.

11 Q Do you recall being deposed on December 29th, 2011?

12 A Yes, I do.

13 Q And before you answered questions in the deposition,
14 you were sworn by the court reporter to tell the truth,
15 weren't you?

16 A Yes.

17 Q And you did tell the truth during that deposition,
18 didn't you?

19 A Yes.

20 Q After you finished testifying, you had a chance to
21 review your deposition testimony to make sure it was
22 accurate, didn't you?

23 A Yes.

24 Q Why don't you turn to page 66 of your deposition
25 transcript in your binder. And during your deposition,

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1 you were asked the following question: I'm referring to
2 line two on page 66.

3 So with respect to the -- okay. So between 860 RSS
4 licensees and the 240 for which Lawson has provided
5 assistance with the installation of RQC, does Lawson have
6 any information as to the status of either the RSS
7 application or the RQC application for the remaining 620
8 customers?

9 Then there was an objection, and you gave the
10 following answer: My understanding is no.

11 Was that your answer on that day to that question?

12 A Yes, it was.

13 MR. MARK: Your Honor, I object to this as a form
14 of impeachment. As noted in the transcript, Mr. Hanson
15 was not designated on that topic. It was beyond the scope
16 of the examination, and the questions and answers that
17 follow that, starting at line 14 on page 66 and continuing
18 to page 67, make clear that his answer is consistent with
19 what he testified here to today, that is he actually had
20 no knowledge one way or the other.

21 MS. ALBERT: Well, I think his answer today
22 varies from the answer he gave at his deposition. He
23 said, my understanding is no. Today he said, I don't
24 know.

25 THE COURT: Objection overruled.

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1 Q Why don't you turn to Plaintiff's Exhibit 1056 in your
2 binder. Are you there, Mr. Hanson?

3 A Yes, I am.

4 Q Attached to the covering email there's a PowerPoint
5 presentation entitled Introducing Lawson Requisition
6 Center dated June 3rd, 2011; is that correct?

7 A That is correct.

8 Q These slides were presented to Lawson customers during
9 the RQC webinar given on June 3rd, 2011; is that correct?

10 A That is correct.

11 MS. ALBERT: I would like to move the admission
12 of Plaintiff's Exhibit 1056.

13 MR. MARK: No objection, Your Honor.

14 THE COURT: How many times does this exhibit
15 get --

16 MS. ALBERT: This is a different exhibit.

17 THE COURT: It's a different one?

18 MS. ALBERT: Yes. It hasn't been admitted yet.

19 THE COURT: It sure looks like a number of its
20 cousins bearing the same date. All right.

21

22 (ePlus Exhibit 1056 admitted.)

23

24 Q Turn to page RQC 905561.

25 A Okay.

1 Q Do you see on that page the third bullet from the
2 bottom reads, quote, RQC available to all impacted
3 customers at no charge; do you see that statement?

4 A Yes, I do.

5 Q On that same page, the next bullet reads, quote,
6 simple 20-minute process by which you download RQC; do you
7 see that?

8 A Yes, I do.

9 Q Now, downloading RQC refers only to a customer's act
10 of downloading the software from Lawson's support site,
11 MyLawson.com; correct?

12 A Correct.

13 Q The act of downloading RQC does not actually render
14 RQC operational; correct?

15 A Correct. You still need to install it.

16 Q Thank you. Turn to page 905565. Do you see the last
17 bullet on that page reading, quote, to avoid possible
18 support delays, download RQC immediately? Do you see
19 that?

20 A Yes, I do.

21 Q You have no knowledge why merely downloading RQC would
22 enable customers to avoid possible support delays, do you?

23 A I do not.

24 THE COURT: What page are you on?

25 MS. ALBERT: RQC 905565, the last bullet on the

1 page.

2 THE COURT: I see.

3 Q The act of installing RQC does not render RQC running
4 and fully implemented; correct?

5 A Correct.

6 Q As of December 29th, 2011, in your deposition, you did
7 not know how many requisition self-service licensees had
8 installed RQC; correct?

9 A That's correct.

10 Q Lawson does not maintain any records that would
11 document the number of RSS licensees that have actually
12 installed RQC; correct?

13 A I don't have any knowledge of that.

14 Q Do you recall being deposed on December 2011 --
15 December 29th, 2011?

16 A Yes, I do.

17 Q And you've already verified you were under oath that
18 day?

19 A Yes.

20 Q And you told the truth that day?

21 A Yes.

22 Q Why don't you turn to page 128 of your deposition.

23 Starting at line ten, you were asked the following

24 question: Does Lawson -- do you personally know how many

25 requisition self-service licensees have installed RQC, and

1 the answer you gave was, no, I do not?

2 THE COURT: Sounds like what he just said.

3 That's not impeaching, I don't think. I think he said the
4 same thing. If he didn't, the import of it was the same.

5 MS. ALBERT: Okay, I'll move on. Thank you, Your
6 Honor.

7 THE COURT: You know the rule about touching the
8 king, don't you?

9 MS. ALBERT: Yes.

10 Q Lawson relies on the download record, not the
11 installation record, to determine whether it can continue
12 to provide support services to a customer; correct?

13 MR. MARK: Objection; foundation.

14 A I do not know that answer.

15 THE COURT: He just said he doesn't know, so I
16 guess he established there isn't a foundation.

17 Q You are aware, sir, that Lawson relies on the download
18 record as far as the flag for SWAT services or whether
19 they can continue to provide services to a customer?

20 MR. MARK: Can we get clarification, Your Honor?
21 I have an objection on just the time frame, whether the
22 question relates to today, past, or what's being referred
23 to at the time of the deposition.

24 Q Well, as of the time of your deposition, sir, you were
25 aware that Lawson relied on the download record as far as

1 the flag for SWAT services or whether Lawson could provide
2 services to a customer, weren't you?

3 A That is incorrect.

4 Q Why don't you turn to page 147 of your deposition.
5 Starting at line 12, you were asked the following
6 question: Quote, how does Lawson know whether it can
7 continue to provide services for those customers' systems
8 if it doesn't know whether the customer has installed RQC
9 or not?

10 Answer: We rely on the download record as far as the
11 flag for the SWAT services or any of the others as to
12 whether we can provide services or not.

13 You gave that answer to that question on that day, did
14 you not, sir?

15 A Yes, I did.

16 Q Thank you. Merely downloading RQC is not the same as
17 installing and implementing RQC into the client's
18 procurement system; correct?

19 THE COURT: He already answered that. You start
20 off asking if it took 20 minutes to download it, that
21 didn't render it operational, you needed to install it,
22 and even after you installed it, you needed to do other
23 things to have it operational. We've already been there,
24 I think.

25 Q If a client has not installed and implemented RQC,

1 doesn't the client still have a system with RSS on it?

2 A I would need clarification.

3 Q If the client previously had RSS on its Lawson
4 procurement system and the client had not installed and
5 implemented RQC, wouldn't the client still have a system
6 with RSS on it?

7 A If they had not installed RQC, yes, they'd still have
8 RSS on it.

9 Q Thank you. As of December 2011 when you were deposed,
10 Lawson had no idea how many of its customers that had
11 downloaded RQC had actually implemented RQC; correct?

12 A Can you repeat the question?

13 Q As of December 2011 when you were deposed, Lawson had
14 no idea how many of its customers that had downloaded RQC
15 had actually implemented RQC; correct?

16 A That's correct.

17 Q As of December 29th, 2011, when you were deposed, you
18 did not know of any Lawson customer that had gone live on
19 RQC; correct?

20 A That is correct.

21 Q As of December 2011, you were not aware of any Lawson
22 customer that had implemented RQC in a production
23 environment; is that right?

24 A That is correct.

25 Q In your deposition, you couldn't tell me a single

1 individual within Lawson who had responsibility for
2 tracking whether or not a customer had replaced RSS with
3 RQC in their production system; correct?

4 A That is correct as of that date.

5 Q If clients had systems that included RSS in their
6 production environment and they have not implemented RQC
7 in the production environment, they could still be using
8 RSS for procurement activities, couldn't they?

9 A Repeat the question.

10 Q If clients had systems that included RSS in their
11 production environment and they have not implemented RQC
12 in the production environment, they could still be using
13 RSS for procurement activities; correct?

14 A That's correct.

15 Q Thank you. Can you turn to Plaintiff's Exhibit 1057.
16 The covering email on the exhibit forwards an attachment
17 with questions and answer from a customer webinar that
18 Lawson conducted relating to RQC; correct?

19 A That is correct.

20 Q And do you see in the middle of the first page there's
21 an email from Steve, Steven Merten, to a number of
22 persons?

23 A Yes, I do.

24 Q And you are one of the persons who received this email
25 and attachment; correct?

1 A Yes, I did.

2 Q Do you see that Mr. Merten indicates that updates have
3 been made by the SWAT team in blue font with initials and
4 date; do you see that statement?

5 A Yes, I do.

6 Q You were one of the persons who made updates to the
7 questions and answers attachment on behalf of the SWAT
8 team; correct?

9 A That is correct.

10 Q Turn, if you would, to the first page of the
11 attachment to Plaintiff's Exhibit 1057, and I refer to
12 question number three on that first page from Sharon
13 Ewing; do you see that question?

14 A Yes, I do.

15 Q She asks, quote, one, can Req Center run while RSS is
16 still running, and, two, can we switch users over in
17 phases, or do we have to do an all-or-nothing switch. Do
18 you see that question?

19 A Yes, I do.

20 Q And the answer posted, do you see the heading of the
21 column next to the question, the heading is Answer to be
22 Posted in FAQ; do you see that?

23 A Yes, I do.

24 Q Does that indicate that this particular answer was
25 going to be posted in a final frequently asked questions

1 document available on MyLawson.com?

2 A Yes.

3 Q The answer that's listed to be posted in FAQ is,
4 quote, yes, because RQC is a new application, it can be
5 run in parallel. The RSS bookmarks need to be renamed
6 since the RQC bookmark file is the same as RSS. Customers
7 are encouraged, however, to stop using RSS; do you see
8 that?

9 A Yes, I do.

10 Q Turn, if you would, to Plaintiff's Exhibit 1067. I
11 think 1057 is already in evidence. If not --

12 THE COURT: 57 or 67?

13 MS. ALBERT: Plaintiff's Exhibit 1057.

14 THE CLERK: It is in, Your Honor.

15 MS. ALBERT: Thank you.

16 Q I'm turning now to Plaintiff's Exhibit 1067, and this
17 is an email chain between you and a David Utteridge; is
18 that correct?

19 A That is correct.

20 Q Who is Mr. Utteridge?

21 A He is a system consultant in the U.K. office.

22 Q In the U.K. office for Lawson?

23 A That is correct.

24 Q And the subject of the email is RQC at Nuffield; do
25 you see that?

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1 A Yes, I do.

2 Q Who is Nuffield?

3 A Their customer over in the U.K.

4 Q Go to the earliest email on the chain on page RQC
5 19876, and that email bridges over to the following page.
6 Mr. Utteridge asks you a question. Nuffield Hospitals
7 have asked if I'm available to install RQC for them. Is
8 that okay for me to do this, or do you want me to arrange
9 it through RQC.SWAT@lawson.com; do you see that question?

10 A Yes, I do.

11 Q Then in the next email from Mr. Utteridge to yourself
12 on page RQC 19876, he asks you, quote, should I uninstall
13 RSS first; do you see that?

14 A Yes, I do.

15 Q How did you respond to Mr. Utteridge's question?

16 A The next email is, no, do not uninstall RSS first.
17 RQC can be installed in addition to RSS when installing
18 RQC running L0920 will update the existing RSS bookmarks
19 to point to RQC. However, they still could access RSS
20 (for testing purposes) by manually typing the RSS URLs in
21 the browser. I will set up with a SA task for this.

22 Q So Lawson is aware that customers could still access
23 RSS even if they've installed RQC; correct?

24 A Yes, if you do additional setups, yeah.

25 Q Thank you. Turn to Plaintiff's Exhibit 1269.

1 MS. ALBERT: I would like to move the admission
2 of Plaintiff's Exhibit 1067.

3 THE COURT: Any objection?

4 MR. MARK: No objection.

5 THE COURT: It's admitted.

6

7 (ePlus Exhibit 1067 admitted.)

8

9 Q Are you at 1269, sir?

10 A Yes, I am.

11 Q Do you see on the first page that these are Lawson's
12 responses to ePlus's interrogatories for contempt
13 proceeding?

14 A Yes.

15 Q Why don't you turn, if you would, to interrogatory
16 number three in Lawson's answer. It's on the sixth page
17 of the document. I'd like to direct you to the last
18 sentence of Lawson's response to interrogatory number
19 three. What does that sentence say?

20 A When RQC is installed, customers automatically lose
21 access to RSS.

22 Q That statement is false, isn't it?

23 A No, it is not.

24 Q We just saw in the prior exhibit that customers did
25 not lose access to RSS; correct?

1 A With additional setup, you could enable access.

2 Q Thank you.

3 A Or re-enable access.

4 Q Thank you. Turn, if you would, to Plaintiff's
5 Exhibit 1058. These are excerpts from Lawson's customer
6 support records; is that correct?

7 A That is correct.

8 Q Turn, if you would, to the page marked -- the first
9 page, RQC 114812. Do you see at the bottom of the page
10 there's a customer number, 5605, Columbia Association; do
11 you see that?

12 A Yes, I do.

13 Q Columbia Association is not one of the 277 health care
14 customers that were subject to the sunset provision in the
15 injunction, is it?

16 A I do not believe so.

17 Q Thank you. Do you see following that reference,
18 there's a case number, 120652? Do you see that?

19 A Yes, I do.

20 Q That indicates a customer support case opened by
21 Columbia Association; correct?

22 A Yes, I do.

23 Q Do you see the entry dated May 23rd, 2011, at
24 7:57:14 p.m. from Mindy Klebe to Gladys Taylor-Brown?

25 A Yes.

1 Q Mindy Klebe is employed by Lawson; correct?

2 A Correct.

3 Q Mindy Klebe was asking Gladys Taylor-Brown, quote,
4 could you please send back a copy of your rss_config.xml
5 file from LAWDIR/system for review; do you see that?

6 A Yes, I do.

7 Q Turn to the next page. Do you see the second entry on
8 that page dated May 24th, 2011, at 3:01:50 p.m. from Mindy
9 Klebe to Imane -- I don't know how to pronounce the last
10 name.

11 A Yes, I see.

12 Q Do you see that entry?

13 A Yes, I do.

14 Q And, again, Mindy Klebe of Lawson was asking the
15 client, quote, could you please send back a copy of your
16 rss_config.xml file from LAWDIR/system for review; do you
17 see that?

18 A Yes, I do.

19 Q You don't know of any reason for Lawson to review a
20 customer's rss_config.xml file in order to provide support
21 services for Requisition Center, do you?

22 A I am not in the support organization, so I do not know
23 what she was doing or what she was referring to.

24 Q The rss.config.xml file has no relevance to
25 Requisition Center, does it?

1 A No, it does not.

2 Q Thank you. Look down on that same page to the entry
3 dated May 25th, 2011, at 8:05:15 p.m. from Mindy Klebe to
4 that same client. Do you see that entry?

5 A Yes, I do.

6 Q And in this entry, Mindy Klebe of Lawson states,
7 quote, Imane and Gladys, I am testing this issue in 901+
8 apps and 901+ environment with RSS XML release 9.0.1.4.01
9 installed, and I'm not able to duplicate the issue; do you
10 see that entry?

11 A Yes, I do.

12 Q So this entry indicates that on May 25th, 2011, Mindy
13 Klebe was testing the issue with RSS XML installed; is
14 that correct?

15 A I'm not in the support organization, but, yeah,
16 according to that sentence, I would agree with that, yes.

17 Q Thank you. Turn to the page marked RQC 114819.

18 THE COURT: Just so I understand it, you are
19 saying that RQC was installed on May 25th, 2011, and that
20 there was a test run on it in connection with running it
21 with RSS. Is that what you are telling me?

22 THE WITNESS: I do not know if they had RQC on
23 the system or not. I don't see any reference to RQC. All
24 I see is she was testing -- all I can do is respond to
25 this sentence, because I don't know what she was doing.

1 THE COURT: I understand that, but you know what
2 was going on as head of the SWAT team, so I guess what I'm
3 asking you is, was RQC available to be run in parallel
4 with RSS as of May 25th, 2011?

5 THE WITNESS: So as of that date, yeah, you could
6 run it in parallel, yes. I don't know if this client was
7 trying to do that or not.

8 THE COURT: Okay.

9 Q Turn to page RQC 114819. In the middle of the page,
10 do you see the entry dated June 30th, 2011, at
11 10:24:35 p.m. from Deb Stark to Debbie Gunn?

12 A Yes, I see that.

13 Q And there Deb Stark asks Debbie Gunn the following
14 question: Quote, I am asking this as you had indicated
15 that these were being created in RSS. For one of the
16 requisitions having this issue, can you dump in csv format
17 with headers, (or excel spreadsheet) the REQLINE file, end
18 quote. Do you see that statement?

19 A Yes, I do.

20 Q So Lawson had knowledge that this client was asking a
21 question with respect to requisitions being created in
22 requisition self-service on June 30th, 2011; correct?

23 A Again, I'm not in the support organization, but if I
24 were to interpret this case, it was -- they are actually
25 working on RQ 10 it looks like, since that's what all of

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1 the entries are about, and then the support representative
2 was trying to figure out if you were trying to do this via
3 web side or directly with the back office applications,
4 and they use the term RSS in this case to ask about the
5 web.

6 Q So they were providing support with respect to
7 requisition self-service; correct?

8 MR. MARK: Objection; misstates the witness's
9 testimony.

10 THE WITNESS: She was providing support on RQ 10.
11 Sorry.

12 THE COURT: I stepped on your line. Say it
13 again. Overrule the objection. Ask again. I don't think
14 any of it is clear.

15 Q So Lawson, as of June 30th, 2011, was providing
16 support to this customer with respect to issues in
17 requisition self-service; correct?

18 A My understanding is they're providing support to RQ
19 10, and they used the term RSS to determine if they were
20 entering the requisition via the web-based product or the
21 back office product which they were actually providing
22 support for.

23 Q And the web-based product was requisition
24 self-service; correct?

25 A In this case, it looks like the client stated, yeah,

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1 requisitions were created in RSS.

2 THE COURT: I lost your answer. The answer is,
3 yes, it was requisition self-service, that was the
4 web-based service?

5 THE WITNESS: Correct, in the web base.

6 Q Thank you. Turn further back in the same exhibit to
7 page RQC 113787. They're not in order. This was the way
8 the exhibit was during your deposition.

9 A I only go up to 114.

10 Q 113787?

11 THE COURT: Look at the last four digits.

12 A 113?

13 Q 787.

14 A 787, okay.

15 Q Or if you want to, you can look at it on the screen.

16 THE COURT: It's hard to see on the screen.

17 THE WITNESS: It's hard to see, yeah. I do have
18 it now.

19 Q Thank you. At the -- towards the bottom of that page,
20 there's a customer ID, 2059, for Western Lake Superior
21 Sanitary; do you see that?

22 A Yes, I do.

23 Q Then, so, do you understand that this case number,
24 116839, was a case opened by Western Lake Superior
25 Sanitary?

1 A Yes.

2 Q Turn to the page RQC 113793. And the second entry,
3 referring to the second entry from Jennifer Nordby dated
4 June 9th, 2011, at -- I'm sorry. I guess it's the fourth
5 entry from Jennifer Nordby dated June 9th, 2011 at 8:38:17
6 p.m. in communication with Grant Brown; do you see that
7 entry?

8 A Yes, I do.

9 Q And in this entry, Ms. Nordby states to Grant Brown of
10 Western Lake, quote, okay, let me explain this better.
11 After you load RQC, you have two options if you want to
12 run RSS and RQC in parallel.

13 And then she provides an option one, you can manually
14 create the RSS bookmarks under Portal Administration under
15 Bookmark Manager, and she provides some instructions, and
16 then further down she provides an option two, you could
17 also edit the LAWSONLD.shopping.csv file; do you see that?

18 A Yes, I do.

19 Q So Ms. Nordby of Lawson is describing a way that this
20 client could reinstate the RSS product after installing
21 RQC; correct?

22 A Yes.

23 Q And Western Lake Superior Sanitary is not one of
24 Lawson's health care clients, is it?

25 A No.

1 Q So in this instance, Lawson was providing instruction
2 to a non-health care entity for how to reinstate
3 requisition self-service into their system; correct?

4 A Again, I'm not in the support organization, but I see
5 the steps listed here.

6 Q So would the answer to the question be, yes, that's
7 correct?

8 A I'm sorry. You have to repeat the question.

9 Q So in this instance, Lawson was providing instruction
10 to a non-health care entity for how to reinstate RSS into
11 their system; correct?

12 A So, yes.

13 MS. ALBERT: Thank you. Nothing further. I'd
14 like to move Plaintiff's Exhibit 1058 into evidence.

15 THE COURT: Any objection?

16 MR. MARK: No objection.

17 THE COURT: How about 1269? Is it in?

18 MS. ALBERT: I believe 1269 is already in
19 evidence.

20 THE CLERK: 1269 is in.

21 THE COURT: All right.

22

23 (ePlus Exhibit 1058 admitted.)

24

25

1 CROSS-EXAMINATION

2 BY MR. MARK:

3 Q Mr. Hanson, let's talk about what you do as practice
4 director of technology. What is the scope of your
5 responsibilities?

6 A Manage a set of system consultants and technical
7 consultants that do product installations, system admin
8 activities, and customizations to the S3 products.

9 Q The installation of the S3 products, that involves
10 taking software and putting it on computers of customers;
11 correct?

12 A That's correct.

13 Q Do you have any responsibility for developing
14 applications?

15 A No, I do not.

16 Q Do you have any responsibility to write code?

17 A No, I do not.

18 Q Do you have any responsibility for testing code to see
19 if it works?

20 A No, I do not.

21 Q When an application is installed by a consultant under
22 your supervision, does the installer need to know the
23 business functionality of that software to install it?

24 A No, they do not.

25 Q Do you have any knowledge of the business

1 functionality of Punchout?

2 A At the very highest level.

3 Q At the time that the injunction issued in this matter
4 in May of 2011 and in June when we've just been talking
5 about, do you have any knowledge of the business function
6 -- of how the Punchout functionality worked in RQC?

7 A No, I did not.

8 MS. ALBERT: Objection; beyond the scope.

9 THE COURT: Overruled.

10 Q SWAT team was mentioned. You were head of the SWAT
11 team, and when did you get that responsibility?

12 A The last week of May.

13 Q Were there -- there were other members of the SWAT
14 team?

15 A Yes, there was.

16 Q And were these members drawn from parts of Lawson with
17 different expertise?

18 A Yes, they were.

19 Q Who were the other members and what expertise was
20 brought together in the SWAT team?

21 A So there were technical folks like myself, Steven
22 Merten and Mark Deutsch, as originally identified to the
23 fight SWAT team. There were folks from the application
24 side, Cristi Bennett, Kathryn Molarian, and Kitty
25 Brozinski, and then also from the learning area, Pamela

1 Schultz.

2 Q And what was your -- what expertise did you bring to
3 the SWAT team?

4 A Technical.

5 Q Involving the same installation processes you
6 supervised in your regular job?

7 MS. ALBERT: Objection; leading.

8 THE COURT: Overruled.

9 A Exactly.

10 Q Now, does Lawson -- when software in the S3 suite is
11 sold to a Lawson customer, does Lawson -- under what
12 circumstances does Lawson perform the installation of the
13 software?

14 A Can you repeat the question?

15 Q Sure. When Lawson sells software to a customer -- by
16 the way, is the sale of the software, the licensing of it,
17 is that part of your responsibility?

18 A No, it is not.

19 Q How does the install group get involved?

20 THE COURT: How does what group?

21 MR. MARK: The installation group --

22 THE COURT: Group, okay.

23 A So once a client purchases our software, we'll get our
24 consulting services engaged, a project manager is
25 assigned. That project manager dictates when to install

1 those products and what products to install, and they
2 would contact our resource planner, and we would do the
3 installation of whatever product they asked for.

4 Q Is it necessary to have Lawson installers install the
5 software?

6 A No, not necessarily. Partners can do it, the client
7 could try to do it, but most likely they're going to need
8 our assistance installing it.

9 THE COURT: Excuse me. Can you buy Lawson
10 software from anybody other than Lawson?

11 THE WITNESS: No, you have to buy it from Lawson,
12 but the services provided could be provided by Lawson or a
13 certified partner, right.

14 THE COURT: All right.

15 Q And let's talk about installing the redesigned RQC to
16 someone who is already a Lawson customer. Must that
17 installation be performed by a Lawson installer?

18 A No.

19 Q So if a customer has a sophisticated IT department,
20 could that IT department perform the install?

21 A Yes, they could.

22 Q Are you aware of such customers?

23 A I am not aware of any particular customer names.

24 Q Are you aware that there are customers that perform
25 installs on their own?

1 MS. ALBERT: Objection; lacks foundation.

2 THE COURT: It would be hard for him to answer
3 that question yes if he doesn't know anybody's names.

4 MR. MARK: He said he did not know any particular
5 customers. I asked if he was aware generally if there
6 were customers who have such -- follow such practices.

7 THE COURT: How could he know that?

8 Q For example, in the service organization, do you
9 sometimes receive queries from customers who are
10 performing installs?

11 A Yes.

12 Q So these are customers who have attempted to do an
13 installation on their own; correct?

14 A Correct.

15 MS. ALBERT: Objection; leading.

16 THE COURT: Listen, on the leading, Judge Merhige
17 had a rule that said something like this: That it went
18 out with the Coolidge administration in bench trials
19 except as to really significant matters. If it's really a
20 preliminary matter, we don't worry about it, but if the
21 lawyer is testifying about something important, then the
22 Coolidge administration rule fails.

23 MR. MARK: Thank you, Your Honor.

24 MS. ALBERT: Understood, Your Honor.

25 MR. MARK: I'm trying to keep things moving a

1 little bit, Your Honor, but I'll try to stay within
2 bounds.

3 Q So, customers are capable of installing and receiving
4 instruction on how to install the RQC redesign, and they
5 can do it by themselves; correct?

6 A That is correct.

7 THE COURT: Judge Merhige had another rule, and
8 that is, don't presume that the judge is not listening to
9 what's been said. That's already been dealt with two or
10 three times. I think I got it.

11 Q From your perspective as an installer, could you
12 compare the amount of work required to install RQC and the
13 procurement suite at a new Lawson customer to that
14 required to install RQC at an existing Lawson customer?

15 A So if a client is installing it from scratch, they
16 would have a lot more activities that they would need to
17 do as far as setting up procurement, setting up item
18 masters, doing the configuration, testing, and then doing
19 the end user training because they'd be seeing it for the
20 first time.

21 From a client transitioning, a lot of that has been
22 set up, so a transition client would only need to get the
23 new product and then do product testing and, again, end
24 user training, but now differences, not trying to explain
25 everything. So it will vary greatly.

1 Q In terms of the user, end user training, who performs
2 that work?

3 A The client does.

4 Q And by end user, can you describe the category of
5 person that is?

6 A The end user is going to be an end user of that
7 organization, so health care, it would be a nurse or maybe
8 a doctor. If it's in the public sector, it could be an
9 administrator person.

10 Q So people who would use it to requisition items, for
11 example?

12 A That's correct.

13 MR. MARK: Could we have Plaintiff's
14 Exhibit 1057, please.

15 Q You were shown this exhibit during your direct
16 examination?

17 A Yes, I was.

18 Q And looking at the first page, the email forwarding
19 the attachment, it says -- the re line is, Q&A from Friday
20 webinar - current version. Are you aware of what the
21 attachment is?

22 A It is one of the drafts that was floating around to
23 answer these questions.

24 Q And this is not the final version, as you understand
25 it, that was posted?

1 A That is correct. This is just a draft that was being
2 circulated.

3 Q If you could turn to the page with number one in the
4 lower left-hand corner, and question three, Sharon Ewing,
5 you were shown that question on direct examination;
6 correct?

7 A Yes, I was.

8 Q And the question reads, one, can Req Center run while
9 RSS is still running, and two parens, can we switch users
10 over in phases, or do we have to do an all-or-nothing
11 switch; correct?

12 A Correct.

13 Q Now, could we have, please, Plaintiff's Exhibit 1002.
14 And go to the page with 64 --

15 THE COURT: 1002 was used by Mr. Lo in some
16 examination, Mr. Lohkamp was it?

17 MR. LO: Yes, Your Honor. It should have been
18 passed up.

19 THE COURT: Everybody got a copy of it then. I
20 was just trying to tell them where they had gotten hold of
21 it.

22 MR. MARK: You are keeping better track than me,
23 Your Honor.

24 Q The page with 646 on the lower right, do you see that?

25 A Yes, I do.

1 Q And do you see the heading, Running Requisition Center
2 in Parallel With Requisition Self-Service?

3 A Yes, I do.

4 Q And do you see the first question underneath that
5 heading?

6 A Yes, I do.

7 Q Could you compare -- if you are able to have the two
8 documents next to each other, can you compare the question
9 on Plaintiff's Exhibit 1002 on page 646 under the heading
10 Running Requisition Center in Parallel with the Sharon
11 Ewing question on Plaintiff's Exhibit 1057?

12 A So the final draft has an additional -- or the final,
13 whatever this is, 1002, has an additional sentence that's
14 not in the draft.

15 Q The questions are the same; correct?

16 A The questions are the same, yes.

17 Q Looking at the answer provided to the questions, are
18 the answers different between the draft and the final?

19 A So the answer is different.

20 Q What is different about the answer in the final
21 version of the response?

22 A The final version has an additional sentence, Lawson
23 will only support RQC and customers will mitigate risk by
24 moving to RQC.

25 Q And is it correct -- and is it correct, looking at the

1 answers provided to various questions under this running
2 Requisition Center and parallel with requisition
3 self-service as appears on Plaintiff's Exhibit 1002, that
4 the sentence you just read stating that Lawson will only
5 support RQC appears in the answers to the first, second,
6 third, fourth, seventh, eighth, ninth, 10th? I may have
7 missed a couple.

8 THE COURT: I've read it. It's there a lot.
9 Somebody has already testified that it's after the lawyers
10 got hold of it. There's three iterations of it. One is
11 what happened in the webinar and the spontaneous answers.
12 Then there's the technical people and business people's
13 edits, and then there's the lawyers were added on to it.
14 That's the final version that was published. I think I
15 got the drift on all this, on that part of it at least.

16 Q If you could turn in the notebook that was provided to
17 Plaintiff's Exhibit 1269. I'm sorry, not 1269. 1067.

18 THE COURT: 1067?

19 MR. MARK: Yes.

20 Q Do you have that?

21 A Yes, I do.

22 Q And do you know, where is the business site where this
23 installation exists?

24 A In the --

25 MS. ALBERT: Asked and answered.

1 THE COURT: Well, I don't know that I remember.
2 What is it? Go ahead.

3 A In the United Kingdom.

4 THE COURT: Is this the Nuffield one? Yes.

5 Q And if you could, turn to the page ending in 19876.
6 The email of September 7th, 2011, from Mr. Utteridge to
7 you asking, should I uninstall RSS first, and you answered
8 that email at the top. It appears on the top of the page
9 where you say, no, do not uninstall first; correct?

10 A Correct.

11 Q From an installation perspective, why do you advise
12 not to uninstall RSS before installing RQC?

13 A If you uninstall RSS, again, you are getting back to
14 having to re-implement it to get all the configurations
15 back. You could lose some of those configurations in
16 trying to get it back, so to save time in doing the
17 transition, we installed RQC on top of RSS so we could
18 retain those configurations and thereby making RSS
19 inaccessible as well.

20 Q So that once the installation of RQC is completed in a
21 production environment, RSS is inaccessible?

22 A That's correct.

23 Q Now, an end user such as you described previously
24 access the guts of the software where the bookmarks are
25 set?

1 A No, they cannot.

2 Q Who has access to that aspect of the software at a
3 customer?

4 A System administrator.

5 Q In setting up a software system and installing RQC,
6 does part of the procedure involve protecting access to
7 that part of the software where the bookmarks are kept?

8 A Yes.

9 Q What kind of protection is provided?

10 A There's additional configuration for specifying who is
11 a portal administrator, who has access to those
12 configurations.

13 Q Turn, if you would, to Plaintiff's Exhibit 1058. The
14 first example from this that you were shown by plaintiff's
15 counsel involve a dialogue for a customer identified as
16 Columbia Association; correct?

17 A Correct.

18 Q Again, this is from the support organization?

19 A Correct.

20 Q If you'd turn to the second page of the document
21 ending in 813 -- I'm sorry, the third page of the document
22 ending 814, do you see that a case number 121274 appears
23 in the top third of the page?

24 A Yes, I see that.

25 Q Does that appear to mark the start of a new case and

1 the end of the previous case involving the Columbia
2 Association?

3 A Yes, they do.

4 Q The last entry in the Columbia Association case,
5 612011 at 3:16 p.m., can you read what appears there?

6 A Thank you for contacting Lawson Global Support with
7 your questions regarding requisition self-service, RSS.
8 Due to the recent court ruling regarding the ePlus patent
9 litigation, Lawson is no longer supporting the requisition
10 self-service, RSS product. For additional information
11 regarding the Court ruling, please visit MyLawson.com.
12 Requisition Center, RQC, the replacement product for RSS,
13 is available to you at this time free of charge from
14 Lawson. For more information, please visit MyLawson.com
15 or contact your account executive. At this point, I will
16 be closing your RSS case. I look forward to supporting
17 you on Requisition Center. Thank you. Megan Anderson,
18 supply chain management supervisor.

19 Q That reflects an end of support to that customer;
20 correct?

21 A That is correct.

22 Q Turn, if you would, to the page ending 819. This
23 reflects a dialogue between someone named Deb Gunn and
24 Imane Adouani; correct? Deb Stark and Debbie Gunn, I'm
25 sorry.

1 A Yes, between Deb Stark and Debbie Gunn.

2 Q Now, the portion that you were shown, does that appear
3 to begin on the previous page, that dialogue?

4 A That dialogue spans multiple pages.

5 Q The entry on page -- the page ending 819, do you see
6 an entry for 6/30/2011, 10:08:22 p.m. from Debbie Gunn --
7 it appears to be from Debbie Gunn to Deb Stark; do you see
8 that?

9 A Yes, I do.

10 Q What does that entry say?

11 A Deb, the example Imane sent earlier in the case was
12 done in RQ 10. I don't requisitions.

13 Q Are you able to determine from this entry whether the
14 product the customer was asking about was RQ 10 or RSS?

15 A This, to me, looks like it was done in RQ 10.

16 Q That would not be providing support to RSS then;
17 correct?

18 A That is correct.

19 Q Turn, if you would, to the page ending 113787
20 involving Western Sanitary. Finding that is always a
21 little difficult.

22 A I still have not found it. Okay, I found it.

23 Q Now, does this appear to be a dialogue relating to
24 running a system in test?

25 MS. ALBERT: Objection; leading.

1 THE COURT: That's one of the ones where the
2 Coolidge administration rule doesn't apply. Let him
3 testify to what he understands about it himself.

4 A My understanding, based upon right at the very
5 beginning, Jacobson is saying, I am running in this test.
6 I am attaching the ic234 from test. So my assumption is
7 this is on a test system.

8 Q Turn, if you would, to the page ending RQC 113793.
9 You were asked questions about this dialogue as well?

10 A Yes, I was.

11 Q Let's turn to the previous page ending in 792; do you
12 see the entry at June 9th, 2011, at 2:25?

13 A Yes, I do.

14 Q And from Jennifer Nordby to Grant Brown. What does
15 that entry state?

16 A You can go into Portal Administration under Bookmark
17 Manager and rename these bookmarks for now if you want.

18 Q If you would turn to page ending 793, the first entry
19 on the page, June 9th at 7:58:31 p.m., Grant Brown to
20 Jennifer Nordby. Would you read that entry, please?

21 A This appears to have changed the names. So when I
22 install RQC (since it used the same names as the old
23 bookmarks) they will not get overridden. I changed all
24 the RSS bookmarks with a preface of RSS (ex. RSS
25 Utilities). I just need to make sure our users can

1 continue unsupported with RSS until we have tested RQC and
2 trained them.

3 Q That responsive testing and training something,
4 response from a customer that typical something you have
5 experienced in doing installs?

6 A Yes.

7 Q Customers would want to test their system before
8 completing a production install?

9 A Correct.

10 Q The entry -- let's go back to the SWAT team briefly.
11 When were you designated to lead the SWAT team?

12 A Last week of May.

13 Q And were there -- were you given a policy to follow as
14 far as the mission of the SWAT team relating to RQC?

15 A Yes.

16 Q What was that?

17 A It was to transition all of our existing RSS customers
18 to RQC, answering any questions or doing installs as part
19 of the SWAT team. Additionally was to stop doing any work
20 on RSS.

21 Q Now, after you became head of the SWAT team, did you
22 convey the policy on the installation of RQC and the
23 denial of service on RSS to people under your supervision?

24 A Yes, I did.

25 Q How did you do that?

1 A On May 27th, I sent an email to all of the S3
2 installers which included my team but a coworkers's team
3 as well to stop any of the, any work on RSS and contact
4 myself and their project managers if they do encounter RSS
5 to understand what actions that they can continue to do.

6 Q Let me show you what's been marked at Defendant's 587.
7 Do you have that in front of you?

8 A Yes, I do.

9 Q Is that the email you just described?

10 A Yes, it is.

11 Q You wrote that email?

12 A Yes, I did.

13 Q And in terms of a customer who had an engagement that
14 had been arranged before the issuance of this Court's
15 injunction, did you provide instruction in this email for
16 what your installers were supposed to do regarding RQC?

17 A Yes, I did.

18 Q What did you tell your installers?

19 A So the second and third points in the email, so it was
20 basically to, instead of installing -- instead of
21 installing RSS at that point, they should instead install
22 RQC.

23 Q And the first piece of advice or policy guidance you
24 gave to your installers in the email, what was that that
25 you gave?

1 A The first was cease all work that might have been
2 asked to do regarding RSS. Don't install, uninstall, or
3 patch RSS for any client. If you are requested to do any
4 of those actions, please inform your PO, which is project
5 manager, and myself, Mark and/or Steven.

6 Q So after the Court issued the injunction, you told
7 your installers to install RQC and not even to touch RSS;
8 correct?

9 A That's correct.

10 Q RSS was radioactive.

11 A That is correct.

12 MR. MARK: I'd offer Defendant's 587 in evidence.

13 THE COURT: Any objection?

14 MS. ALBERT: No objection.

15 THE COURT: It's admitted.

16

17 (Defendant's Exhibit 587 admitted.)

18

19 Q Did you have -- are you aware of instances where
20 particular installers had appointments, as we just saw in
21 Defendant's Exhibit 587 and did not install RSS?

22 A Yes.

23 Q Do you know who Felix Epia is?

24 A Yes.

25 Q Did I say his name correctly?

1 A Yes, you did.

2 Q Who is he?

3 A He's a system consultant in the Philippines.

4 Q And do you recall receiving a request for guidance
5 from Mr. Epia regarding a scheduled install of RSS?

6 MS. ALBERT: Objection; lacks foundation.

7 MR. MARK: I asked him if he recalled receiving
8 such a request.

9 THE COURT: Overruled.

10 A Yes, I did.

11 Q What was the nature of the request?

12 A The nature --

13 MS. ALBERT: Objection; hearsay.

14 THE COURT: If you are asking what he asked,
15 that's hearsay.

16 MR. MARK: Mr. Hanson, as the supervisor of his
17 install crew, has responsibilities for directing their
18 actions and so forth. He receives requests and responds
19 to them, providing them guidance and directing their
20 actions. This is notice to him of what his folks in the
21 ground are doing so he can direct their actions.

22 MS. ALBERT: He's still asking for an
23 out-of-court statement for the truth --

24 THE COURT: He's offering it for a non-hearsay
25 purpose, I guess is his point, but the question is, is

1 that relevant. What does notice to him have anything to
2 do with the case?

3 Q Let me ask it way: Without telling me what he asked
4 you about, did you have a communication from Mr. Epia; yes
5 or no?

6 A I don't recall.

7 Q Do you recall whether a request from Mr. Epia was
8 transmitted to you?

9 A I don't recall if it was from Mr. Epia himself.

10 Q Did you direct Mr. Epia, in response to the question
11 you received, not to install RSS at a customer?

12 MS. ALBERT: Objection; lacks foundation. He
13 said he did not recall a request from Mr. Epia.

14 THE COURT: I think you've gone about as far as
15 you can without him -- if he doesn't know anything.

16 Q Let me ask you to take look at Defendant's
17 Exhibit 588. Do you have that in front of you?

18 MS. ALBERT: Objection; hearsay.

19 THE COURT: He hasn't asked a question yet.

20 Q Now, you see the second --

21 THE COURT: What are you doing, asking him if
22 that refreshes his recollection?

23 MR. MARK: I'll start with that.

24 THE COURT: That's a good place to start. Then
25 you don't get into trouble.

1 MR. MARK: Okay.

2 Q Do you see -- read to yourself --

3 THE COURT: Look at that document and tell us if
4 it refreshes your recollection about whether you received
5 any communication from Mr. Epia about installing RSS. The
6 answer is yes or no. It does or doesn't refresh your
7 recollection. Do you understand what I'm saying when I
8 say refresh your recollection?

9 THE WITNESS: I do.

10 THE COURT: Does reading that prompt your memory
11 in respect -- without reading the document to give the
12 answer, does it prompt your own independent memory with
13 respect to whether or not you had such a communication;
14 yes or no?

15 THE WITNESS: Yeah, this recollects --

16 THE COURT: Now, what do you recall -- without
17 reading the document, what do you recall, if anything?

18 THE WITNESS: So I was responding to the PM,
19 actually his question, but I was -- so I was responding to
20 him, but I was also cc-ing Felix. So I was providing
21 information to Felix, but Felix was not, in this instance,
22 did not come and talk to me. It was actually through the
23 project manager and the resource planners how the question
24 got provided.

25 MS. ALBERT: We're dealing with hearsay within

1 hearsay.

2 Q What did you direct -- what action did you direct
3 after receiving the inquiry?

4 A After receiving the inquiry, I responded back to both
5 Michelle Roisum, who is the resource planner, Brian as
6 well as Felix and said, yes, we will install RQC instead
7 of RSS. I will work with Felix to ensure this happens.

8 MR. MARK: Thank you. I offer Defendant's
9 Exhibit 588 in evidence.

10 MS. ALBERT: Objection; hearsay, hearsay within
11 hearsay as well.

12 MR. MARK: It's a statement from Mr. Hanson made
13 at the time and memorializes --

14 THE COURT: What does that mean? Does that make
15 it any less hearsay? It's hearsay. You used it for its
16 purpose which was to refresh his recollection. Now you
17 have the testimony. Turn mother's picture to the wall,
18 and move on. Enlist in the service of the country and go
19 to war. Let's go.

20 Q In terms of the work that the SWAT team did, did
21 you -- were RQC -- was RQC installed at customers in a
22 production environment under your supervision?

23 A Yes.

24 Q During -- so during the summer of 2011, were such
25 installs completed by you?

1 A Yes.

2 Q And were any installations -- was the objective of
3 such installs and the work of the SWAT team to get
4 installs done in a production environment?

5 A Yes.

6 Q Do you have any recollection of approximately how many
7 installs were completed as of, let's say, December 2011?

8 A We did roughly 60 installs or assistance of installs.

9 MR. MARK: No further questions.

10 THE COURT: Any redirect?

11 MS. ALBERT: I just have a couple.

12

13 REDIRECT EXAMINATION

14 BY MS. ALBERT:

15 Q Turn back to Defendant's Exhibit 587. Counsel for
16 Lawson directed you to this exhibit and to the sentence
17 reading, do not install, uninstall, or patch RSS for any
18 client. Do you see that statement?

19 A Yes, I do.

20 Q So you left requisition self-service on the customers'
21 systems; correct?

22 A Correct.

23 Q Isn't it correct that a customer system today can run
24 both requisition self-service and Requisition Center in
25 parallel?

1 A If you perform the additional actions to make it
2 available, yes.

3 MS. ALBERT: Nothing further.

4 THE COURT: Can he be excused? Does anybody need
5 him further?

6 MS. ALBERT: We have nothing further.

7 THE COURT: All right, Mr. Hanson, you are
8 excused. Thank you for being with us and giving us your
9 testimony.

10 THE WITNESS: Thank you.

11 THE COURT: Do you have Dr. Weaver, or is that
12 the end of your case except for Dr. Weaver?

13 MS. ALBERT: I think we're ready with the slides
14 from the videos.

15 THE COURT: I'm going to ruin Mr. Thomasch's
16 lunch. Why don't you give them to him so he can take a
17 look at them, familiarize himself with them while he's
18 eating his sandwich. Then we will resume at ten minutes
19 to 2:00 after I -- you if you feel like that's
20 insufficient time, you'll please let us know and we'll get
21 you some extra time.

22 MR. THOMASCH: Thank you, Your Honor.

23 THE COURT: I don't know if you're trying to run
24 it in parallel with the machine or not.

25 MS. ALBERT: I believe Dr. Weaver -- I mean, I

1 believe it would be easier to run the video at the same
2 time as he's explaining with the slides. It might be
3 easier that way.

4 THE COURT: All right. You can do that. Do you
5 know, whoever it was that talked with IT people -- excuse
6 me. I wasn't sure who it was. Do you know if there's
7 anything they can do --

8 THE CLERK: They said there was not.

9 THE COURT: They said there's nothing? Huh.

10 THE CLERK: They told me our system -- that --
11 the problem stems from their resolution. Do you want me
12 to have Scott come up?

13 THE COURT: No. I just wondered if it was worth
14 the effort, but if they've already been through it,
15 there's no sense in going through it again.

16 MR. THOMASCH: Your Honor, may I inquire on one
17 matter? I believe that we will probably have enough time
18 to deal with the slides. That's not my concern. I am
19 thinking that we're behind the schedule that I expected.
20 I thought today would move a little quicker than it has.

21 THE COURT: So, too, did I.

22 MR. THOMASCH: And so now I'm not sure how long
23 the plaintiffs intend with Dr. Weaver, and I'm starting to
24 get concerned about Mr. Samuelson who, as I mentioned, is
25 a former employee who took time off and came here --

1 THE COURT: Do you want to take him right after
2 lunch?

3 MR. THOMASCH: I'd prefer to take him right after
4 lunch.

5 THE COURT: Any objection?

6 MS. ALBERT: No objection.

7 THE COURT: We'll take Mr. Samuelson right after
8 lunch.

9 MR. THOMASCH: Thank you, Your Honor.

10

11 (Luncheon recess.)

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1 THE COURT: All right. Is this
2 Mr. Dusseault.

3 MR. DUSSEAULT: Yes, Your Honor, thank you.
4 And thank you to the Court and to ePlus for indulging
5 us to take this witness out of order.

6 Lawson calls Kevin Samuelson in as part of
7 its remedies case.

8 THE COURT: Samuelson. Okay. Thank you.
9

10 KEVIN SAMUELSON, called by the Defendant, first
11 being duly sworn, testified as follows:
12

13 DIRECT EXAMINATION

14 BY MR. DUSSEAULT:

15 Q Good afternoon, Mr. Samuelson.

16 A Hi.

17 Q Will you please state your full name for the
18 record?

19 A Kevin Samuelson.

20 Q Where do you currently work, sir?

21 A I work at Backcountry.com.

22 Q What is Backcountry.com?

23 A A \$400 million e commerce company.

24 Q What does it sell?

25 A We sell -- it's a technology company that also

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1 sells equipment for outdoor sports, biking, cycling,
2 etc.

3 Q Where did you work before joining backcountry.com?

4 A Infor.

5 Q What was your position at Infor when you left that
6 company?

7 A Chief financial officer.

8 Q How long did you work at Infor?

9 A Approximately 10 years.

10 Q When did you start at Infor if you recall?

11 A In full-time basis, 2002.

12 Q Could you describe briefly the positions you held
13 while at Infor?

14 A Sure. When I started at Infor I was the vice
15 president of acquisitions and integrations. Later the
16 senior vice president of acquisitions and
17 integrations, and then later chief financial officer.

18 Q Have you ever held a position at Lawson?

19 A Yes. I served at chief financial officer at
20 Lawson as well.

21 Q When was that, sir?

22 A From the close of the acquisition by Golden Gate
23 Capital in July until approximately September. So
24 July 2011 through September 2011.

25 Q What is the relationship between Infor and Lawson?

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1 A Sure.

2 THE COURT: Excuse me a minute. Take that
3 microphone, pull it towards you just a touch. You
4 don't need to lean up and speak into it. It will pick
5 you up. But I think it will be easier for everybody
6 to hear.

7 THE WITNESS: Is that better?

8 THE COURT: Yes, it is.

9 A So Golden Gate Capital is the primary owner of
10 Infor and Golden Gate Capital first acquired Lawson on
11 a stand alone basis, and then subsequently Infor
12 acquired Lawson and the two companies were put
13 together and merged.

14 Q What were your job responsibilities as vice
15 president of mergers and acquisitions at Infor?

16 A Sure. So in that role, I looked for companies to
17 possibly buy. Did due diligence on those companies to
18 make sure that there was a strategic fit and there
19 weren't any issues.

20 Then following the purchase of companies,
21 integrated them with Infor.

22 Q What were your responsibilities, just very
23 briefly, when you were the CFO of Lawson?

24 A Oversaw all of the preparation and execution of
25 everything related to financials as well as IT.

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1 Q When you transitioned from your role as CFO of
2 Lawson to CFO of Infor, did you have any
3 responsibility for Lawson's finances?

4 A Yes, I did. Lawson actually did what's called a
5 shared services agreement, so effectively outsourced
6 all of their financial and IT operations to Infor.
7 Then as CFO of Infor, I oversaw those operations.

8 Q Are you personally familiar with Lawson's
9 finances, including generally its revenues, cost and
10 profitability for the time period between May 2011 and
11 when you left the company?

12 A Yes, I am.

13 Q How did you become familiar with this company?

14 A So, initially, again, I was part of the due
15 diligence team when we looked to the Golden Gate
16 Capital to acquire Lawson, which began in early 2011.
17 Did significant due diligence on the financial
18 statements to and including hiring
19 PricewaterHousecoopers to go and analyze all the
20 financial statements and then obviously as CFO of
21 Lawson and then CFO of Infor overseeing those
22 financials, I was also involved in the numbers.

23 THE COURT: You ceased being CFO of Infor
24 when did you say?

25 THE WITNESS: In February 15, 2014.

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1 THE COURT: Thank you.

2 Q Now, I'd like you to just very briefly describe to
3 the Court your background before you joined Infor.

4 Where did you attend college?

5 A University of California at Berkeley.

6 Q Where did your work after college?

7 A The American College of Sophia, an American school
8 in Sophia, Bulgaria.

9 Q What is did you do there?

10 A Taught English.

11 Q That's a bit different from your other jobs. What
12 was your next job?

13 A It gets better. I worked at Bank of America
14 Securities, which is the investment banking arm of
15 Bank of America.

16 Q What did you do at Bank of America?

17 A Sure. I was on what's called the retail team. So
18 we looked at retail companies, helped with equity
19 research, initial public offerings, acquisitions, and
20 following offerings.

21 Q Where did you work after that?

22 A Then I went to Robertson Stephens where I was on
23 the Internet and technology team and then ultimately
24 the media team. So same of work, but all around
25 technology companies.

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1 Q What is Robertson Stephens?

2 A An investment bank.

3 Q Where did you work after Robertson Stephens?

4 A Parallax Capital, which is a private equity fund
5 which focuses on acquiring software companies.

6 Q How long were you at Parallax Capital?

7 A Roughly, two years.

8 Q What did you do while you were at Parallax
9 Capital?

10 A Parallax is a fund, and what the Parallax does is
11 goes and buys primarily software companies, operates
12 them, and then either takes them public or sells them.
13 So I sourced transactions. So looked for company to
14 potentially buy. Did due diligence on those
15 companies. Then when there are integrations with
16 other portfolio companies, worked on those
17 integrations.

18 Q What was your next position after Parallax
19 Capital?

20 A So Infor -- Parallax is a small owner at Infor.
21 So I went directly from working on transactions
22 related to Infor to being a full-time employment at
23 Infor. That's when I became advice president of
24 mergers and acquisitions.

25 Q In summary, sir, how many years have you been

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1 working in the field of finance?

2 A Fifteen.

3 Q Over that 15-year period, have you had the
4 opportunity to look at and work with and company
5 costs, P&Ls and profits?

6 A All 15 years.

7 Q Now, I'd like to ask you a few questions more
8 specifically about Lawson. And the Court obviously
9 has some background in this. So I don't want to go
10 too deep in the detail, but just very generally what
11 kind of products does Lawson sell?

12 A Sure. So at the highest and broadest level,
13 Lawson sells what are called enterprise software
14 products. So products that companies use to run their
15 operations. Lawson is particularly strong in products
16 that run manufacturing companies, financial-based
17 products and human capital management products.

18 Q What are Lawson's primary revenue streams, again
19 just briefly?

20 A Sure. Lawson's primary revenue streams are the
21 same as most enterprise software companies. There are
22 three revenue streams. The first is called license
23 revenue. That's when you sell a customer a license.
24 90 percent of the time that's what's called a
25 perpetual license, so it's good forever. So that

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1 gives a customer the right to use the software.
2 That's normally a one-time cost and that customer then
3 owns it indefinitely.

4 The second revenue stream is what's called
5 maintenance or support. And those terms are used
6 interchangeably. And that's usually approximately 20
7 percent of the license cost. So if a customer pays
8 \$100 one time for a license, they'll pay \$20 every
9 year for maintenance and support. And that entitles
10 that customer to any help they might need. So there
11 are call centers with people who provide support to
12 help them use the product, updates to the products,
13 bug fixes, any kind of advancements we work on in our
14 research and development group all go to customers who
15 annually pay maintenance.

16 The third revenue stream is called services or
17 consulting. And that's where our people go on site
18 with customers and do what we call implement our
19 software. Put it into the business. Also do custom
20 work to change how the software works on site for a
21 customer.

22 Q At a very high level, we'll talk about this in
23 more detail, what kind of cost does Lawson have to
24 incur and may in order to earn these revenue streams?

25 A Sure. So Lawson, like many companies, has cost of

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1 goods. So costs that are directly attributable to
2 very specific revenue lines. But also like other any
3 other company, Lawson has what are called operating
4 costs, thinks like a sales force, a finance group, and
5 HR group, all things that are required to operate a
6 business and sell product.

7 Q Does the amount of money that Lawson has to spend
8 vary based on the amount of revenue coming into the
9 company?

10 A Yes, absolutely.

11 Q Explain again just generally how that works.

12 A Sure. So like any company, we have a cost base.
13 Some of those costs will automatically adjust
14 depending on what our revenue is.

15 So think of third party costs that are only paid
16 when something is sold. But also, for example, we
17 have a sales force, and the size of our sales force is
18 dictated by the amount of our sales. And we can
19 adjust it when sales are up or when sales are down.

20 Q Now, if Lawson were to learn that it were to
21 permanently lose a particular stream of revenues from
22 a particular product, would that affect the company
23 spending on cost?

24 A Yes.

25 Q How?

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1 A So as a management team, everybody within the
2 company down to the lowest level of managers, are
3 generally paid on revenue, on how much revenue they
4 generate, but also how much margin they general.

5 So specific groups are always looking at what does
6 the demand look like, are we properly staffed, are we
7 properly spending relative to demand. And when demand
8 is strong, we're hiring and we're spending more to
9 meet that demand, but when demand slackens off, for
10 example, when the economy goes bad, our teams take
11 actions to make sure that costs are cut.

12 Q Again, at a very high level, I want to talk about
13 some of the products that the company sells to the
14 extent they may come up later in your testimony.

15 Not particularly by name, but just terms we might
16 use. Does the term "stock keeping unit or SKU" mean
17 anything to you?

18 A Yes.

19 Q What does it mean?

20 A So that's kind of the most granular level to think
21 about a product. So, for example, Lawson has 4,000
22 SKUs. You look at Infor, it's multiples of that. So
23 those are the most kind of granular level of product.
24 That's not necessarily how a customer thinks about our
25 product or frankly even a salesperson thinks about our

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1 product. It's at a very granular level.

2 Q Are you familiar with the term "module" used in
3 the context of Lawson products?

4 A Yes, I am.

5 Q What does that mean?

6 A So that's -- effectively think of that as a
7 combination of SKUs that will be used to solve a
8 specific business problem.

9 Q Are you familiar with the term "configuration"
10 used within Lawson's products?

11 A Yes.

12 Q What does that mean?

13 A Think of that as how a module is actually deployed
14 and used and configured to solve that specific
15 problem.

16 Q Are you familiar with a term "suite" as used in
17 connection with the products?

18 A Yes. So a suite would be a combination of
19 modules.

20 Q Are you familiar with use of the word "product" in
21 the context of the business and, if so, how would you
22 use it?

23 A Yes. So product, frankly, means different things
24 to different people in a software company. If you ask
25 me what a product is, I would say something like ERP

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1 is a product. But if you ask someone in development,
2 they would be much more granular and specific and say,
3 you know, inventory management is a product. So
4 that's a little bit more loosing used term in our
5 industry.

6 Q Does Lawson specifically track its costs on a SKU
7 by SKU or configuration by configuration basis?

8 A No.

9 Q Does Lawson specifically track its profitability
10 on a SKU by SKU or configuration by configuration
11 basis?

12 A No.

13 Q Based on your 15 years of experience in finance,
14 do you have an understanding of whether software
15 companies more generally track cost and profitability
16 on a SKU or configuration basis?

17 A I've probably have done diligence on 100 software
18 companies, and at Infor we acquired 50, and I've never
19 seen anyone do that.

20 Q Does Lawson track its overall company-wide cost
21 and profitability?

22 A Yes.

23 Q Do you consider the information that Lawson keeps
24 with respect to its company-wide profits and costs to
25 be reliable?

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1 A Yes, absolutely. We're audited by
2 PricewaterHousecoopers, which is a well-known
3 accounting firm. Lawson prior to acquisition would
4 have publicly traded equities. So it was scrutinized
5 by the SCC. And then following the acquisition had
6 publicly traded bonds, which were also under SCC. So
7 they are heavily scrutinized financial statements.

8 Q Based on your experience at Infor and Lawson, do
9 you believe that Lawson's company-wide cost and profit
10 margins shed any light on the cost and profit margins
11 of specific products, such as the products that make
12 up the configurations at issue here?

13 A Sure. I so think that's probably the best proxy
14 for the products in question here. The way I sort of
15 think about it is fairly simple. We have sort of
16 three tranches of products, if you will.

17 There are products that are brand new where we're
18 investing very heavily in R&D without much in the way
19 of sales. Those are far less profitable than most
20 other products, and certainly the products in question
21 here today.

22 On the other end of the spectrum, there are
23 products that are very old where we're no longer
24 selling licenses associated with those products.
25 We're merely running them for support. Those have

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1 incredibly high margins.

2 The products that we're talking about here today
3 are more middle of the road or common or average
4 relative to our products. Where we are selling them,
5 we are investing in them. So I think our overall
6 profits are a pretty good proxy for the specific
7 profits of those products.

8 Q I'd like to put up a slide, Mr. Samuelson. Slide
9 802.

10 THE COURT: You said your overall profits
11 were a proxy for the kind of products that we're
12 talking about here. You mean the percentage, the
13 gross, the net? What are you talking about when you
14 say that?

15 THE WITNESS: I would say operating profits
16 are pretty similar. So the amount of not just cost of
17 goods, but sales cost that goes into them, the R&D
18 cost that goes into them. G&A costs, all of those
19 costs are probably about the same for these products
20 as they are for the average of the company.

21 THE COURT: So when you use the term
22 "profits," you're talking about operating profits?

23 THE WITNESS: Correct.

24 Q Let me ask one following up on that, if I could.
25 Do you have a view as to whether the ratio of

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1 percentage of Lawson's overall costs to its revenues
2 is comparable company-wide to what you would expect it
3 to be with the products at issue?

4 A I'm not quite sure I follow your question. Could
5 you repeat it?

6 Q Sure. I'm trying to clarify it. I may not be
7 doing that. Do you have a view on whether the
8 percentage of the company's overall revenues that are
9 made up of a particular group of costs on a
10 company-wide basis is comparable to what you would
11 expect to see if you were looking at these particular
12 products?

13 A I believe it's roughly comparable. I believe the
14 company's profit margins are roughly comparable to the
15 products in question, if that's what you ask.

16 Q Thank you.

17 A Yes.

18 Q Now, I did --

19 THE COURT: The overall profit margin is
20 roughly comparable to the products at issue?

21 THE WITNESS: That's correct.

22 Q If I could, I'd like to show slide 802. And slide
23 802 --

24 THE COURT: Excuse me just a minute. Does
25 anybody have a streaming slide? Mine is on the move.

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1 Call IT and ask them if they can come up.

2 THE CLERK: All right.

3 THE COURT: Do you have a book that has a
4 slide in it?

5 MR. DUSSEAULT: We do, Your Honor.

6 THE COURT: Thank you.

7 MR. DUSSEAULT: Sorry. I thought that was up
8 there.

9 THE COURT: Nobody else has this?

10 MR. DUSSEAULT: No.

11 THE COURT: You're okay?

12 MR. DUSSEAULT: We're fine.

13 THE COURT: Thank you.

14 MR. DUSSEAULT: And, Your Honor, I'd clarify,
15 this slide contains on it two exhibits, defense
16 exhibit -- excuse me. Plaintiff's Exhibit 1074 and
17 Defense Exhibit 711, both of which are on the list of
18 exhibits to which there's no objections. So I would
19 move Plaintiff's 1074 and Defendant's 711 into
20 evidence.

21 MR. STRAPP: No objection.

22 THE CLERK: 1074 plaintiff and 711 defendant?

23 THE COURT: Yes. And they are in without
24 objection.

25 THE CLERK: Thank you.

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1 (Plaintiff's Exhibit No. 1074 and Defendant's
2 711 are admitted.)

3 Q Mr. Samuelson, are you able to see slide 802 okay?

4 A Yes.

5 Q Do you recognize the documents that are on slide
6 802?

7 A Yes.

8 Q What are they?

9 A The document on the left is the 2011 profit and
10 loss statement for Lawson, U.S. only. And the
11 statement on the right is the 2012 profit and loss
12 statement for Lawson only, U.S. only.

13 Q Did you supervise the creation of these documents?

14 A Yes.

15 Q Explain for the Court just very briefly?

16 THE COURT: Excuse me. I don't have the
17 slide. Is 1074 the 2011 P&L?

18 THE WITNESS: Yes.

19 THE COURT: And the 711 is the what?

20 THE WITNESS: 2012 profit and loss statement.

21 THE COURT: All right. Sorry.

22 THE WITNESS: No problem.

23 Q Mr. Samuelson, did you supervise the creation of
24 these two P&Ls?

25 A Yes.

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1 Q If you could, just explain to the Court again very
2 generally what a P&L statements is.

3 A Sure. Just like the name indicates, this shows
4 our profits and our losses. So it starts with our
5 revenue. Backs out costs that are specific to cost of
6 goods, then operating costs, then other costs, working
7 our way down to net income.

8 Q What is the source of the financial information
9 that's contained on the P&L?

10 A This is comprised by using our general ledger,
11 which is literally thousands and thousands of lines at
12 a very, very granular level that our accountants used
13 and closed the books on every month and quarter. On
14 the left-hand side is Lawson's original system that
15 they used when we acquired them which is why it looks
16 a little different than the right-hand side. And the
17 P&L on the right-hand side comes from Infor system,
18 which is used for that same type of work.

19 Q Was there a transition between the Lawson system
20 and the Infor system between the time that these two
21 profit and loss sheets were generated?

22 A That's correct. So following the acquisition by
23 Infor, we ultimately put all of Lawson on Infor set of
24 systems.

25 MR. DUSSEAUT: Your Honor, are you okay for

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1 us to proceed?

2 THE COURT: Excuse me just a minute. Based
3 on what you've seen, is it best just to shut it off
4 and wait for a while?

5 (Discussion off-the-record with the court IT
6 staff.)

7 THE COURT: All right. Let me ask you
8 something. Can you read what's on your screen?

9 THE WITNESS: No, but I am very familiar with
10 this.

11 THE COURT: It's all fuzzy?

12 THE WITNESS: Correct.

13 THE COURT: Thank you. We're going to
14 adjourn and I'm going back to Dr. Baker.

15 Okay. Is this another one of these problems
16 with the system?

17 MR. DUSSEAU: Your Honor --

18 THE COURT: Have you talked with them about
19 whether your system is equally as fuzzy as their
20 system is?

21 (Discussion with IT staff off-the-record.)

22 THE COURT: Thank you for your help.

23 Now you know that neither the witness nor I
24 can read what is here.

25 MR. DUSSEAU: Your Honor, just for this

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1 afternoon's purposes, when I question Mr. Samuelson
2 about specific line items, we're going to put up a
3 different version with larger print.

4 THE COURT: Okay.

5 MR. DUSSEAUT: I'm not going to test
6 everybody's eyesight.

7 BY MR. DUSSEAUT:

8 Q Mr. Samuelson, before we broke, briefly, you were
9 talking about the source of the P&L information coming
10 from the general ledger?

11 A Correct.

12 Q You had spoken earlier in your testimony about the
13 reliability of Lawson's financial information. Do you
14 recall that?

15 A Yes.

16 Q Do you consider the information to be maintained
17 in Lawson's general ledger to be reliable?

18 A Yes, it's the same system by which those audits by
19 PricewaterHousecoopers were done. To the extent we
20 are audited by tax authorities, it's the same
21 information that's used for that. It's the same
22 information we supply financials to the SCC. So it's
23 the same source of record.

24 Q What geographic regions do these two P&L records
25 cover?

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1 A The United States.

2 Q The Judge already asked you a question along this
3 line, but could you just very briefly describe to the
4 Court how you would go about using company-wide
5 information on this P&L to calculate a profit margin?

6 A So at a company level? A profit margin at a
7 company level?

8 Q Yes.

9 A Again, we take the revenues, subtract the cost of
10 goods, subtract the operating costs to get to an
11 operating margin. Then if we wanted to go to a net
12 margin, we'd subtract other costs like interest,
13 depreciation, amortization, etc.

14 Q Now, Mr. Samuelson, is the type of information
15 covered in these two P&L statements generally the
16 same?

17 A Yes, again, it's the same exact information, just
18 that after Infor acquired Lawson, we moved to a
19 different system, so the depiction is different, but
20 the information is the same.

21 Q Just to be clear, the actual numbers are different
22 because it's different years, but the categories are
23 the same?

24 A That's correct.

25 Q Now, I'd like to direct you to Exhibit DX 711,

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1 which has been moved into evidence, which is a 2012
2 statement. And if I ask you questions about the
3 categories of spending on the 2012 statement, would
4 those also be generally applicable to 2011 as well?

5 A Yes.

6 Q To assist everybody in seeing what's on the
7 screen, we're going to pull up a screen shot of
8 Defense Exhibit 711, the 2012 P&L, which zooms in on
9 the relevant portion. All right?

10 THE COURT: I can tell you that's tremendous
11 improvement in the size of the fuzziness.

12 MR. DUSSEAULT: We may all be following along
13 in the paper version.

14 THE COURT: We'll do it the old-fashioned
15 way.

16 MR. DUSSEAULT: That's probably right. Okay.
17 BY MR. DUSSEAULT:

18 Q All right. Well, Mr. Samuelson, do you see a line
19 on the 2012 financial that refers to cost of sales?

20 A Yes, I do.

21 Q What are costs of sales?

22 A So, again, this is -- generally-accepted
23 accounting principles or GAP is the governing body
24 that determines how exactly or where exactly we record
25 our costs.

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1 So cost of sales are those costs that are very
2 specifically allocatable to one specific line, a
3 revenue line, effectively.

4 Q What are the general categories that make up the
5 cost of sales? And if you can identify them from the
6 spreadsheet, that would be great.

7 A Sure. So they actually align perfectly with the
8 revenue. So I talked earlier about license revenue,
9 maintenance or support revenue, and services revenue.
10 So you can see our cost of goods are summed up in
11 exactly the same fashion. There's a cost of license,
12 a cost of support, and a cost of services.

13 Q I'd like you to talk very briefly about each one
14 of those separately, sir. What are examples of costs
15 of licenses?

16 A Sure. I'll go through the top two. They are very
17 good examples. So the top cost there, total channel
18 partner commission, so we have 500 smaller companies
19 who resell our software. When they resell our
20 software, we recognize the revenue and then we pay
21 them a commission. That commission is in the cost of
22 goods.

23 The second one is what's called a third party
24 royalty. So that's where we sell a product. There's
25 a third party product involved, something from a

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1 company like IBM, Oracle. I know in the products in
2 question here there's a royalty to IBM, for example.
3 That's where we, again, recognize all that revenue,
4 then we remit a payment to that third party. That's a
5 specific cost of goods. So those are two examples.

6 Q I know you're not on the product or sales side of
7 the company, but do you have a general understanding,
8 sir, of the two product configurations that are at
9 issue in this particular proceeding?

10 A Yes.

11 Q Now, do these costs, these cost of licenses,
12 benefit or pertain to the two procurement
13 configurations that we're talking about in this
14 proceeding?

15 A Yes. Again, if any one of our partners, those
16 smaller companies, resells these products, they're
17 then due a commission based on those sales. Equally,
18 I think their products like IBM products embedded in
19 the products and the combinations of products we're
20 talking about here. So if someone like IBM would be
21 due a payment as well.

22 Q Are you familiar, sir, with the concept of
23 variable costs?

24 A Yes.

25 Q What does that concept mean to you?

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1 A The sort of what I'll call academic definition
2 would be a cost that varies with revenue.

3 Q What could a fixed cost be?

4 A A cost that doesn't vary with revenue. And I
5 think there's gray area around real application of
6 that, but that's the kind of what I would call true
7 definition, at least in my mind.

8 Q Does a variable cost necessarily vary
9 automatically meaning the moment a sale isn't made,
10 the revenue isn't there?

11 A Some costs vary automatically. Those examples I
12 just gave, if a channel partner sells a product, we
13 may them a commission. If they don't seel it, we
14 don't pay a commission. So that commission would vary
15 automatically.

16 But other costs in our business, and our business
17 is 70 to 80 people, you make cost decisions very
18 quickly. And they are based on revenue or demand.
19 And they vary, but it doesn't happen automatically.
20 We need to make decisions about where and how to cut
21 costs.

22 Q Can whether a given cost is fixed or variable
23 differ based on the time window that you're
24 addressing?

25 A Well, certainly. I guess over an unlimited amount

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1 of time everything is variable. But the way we think
2 about it is can the cost come out of the business
3 quickly after we determine there's going to be a
4 change in revenue. And by quickly, I would say within
5 weeks or months.

6 Q Now, with that understanding of variable costs,
7 sir, are the costs of licenses that the company incurs
8 that you have been talking about costs that you would
9 consider to be variable?

10 A Yes, those are variable costs.

11 Q Why is that?

12 A Because those vary directly with revenue. If a
13 partner doesn't sell a product, we don't have a cost.
14 So it's directly and automatically variable, for
15 example.

16 Q So if Lawson were to refrain from selling
17 procurement configurations No. 3 and 5, those costs
18 would not be incurred?

19 A That's correct. If a channel partner wasn't able
20 to sell the product, we wouldn't have to pay a
21 commission.

22 Q You also referred to another category called cost
23 of maintenance or cost of support.

24 A Yes.

25 Q Describe for the Court what that is.

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1 A Sure. I mentioned earlier that maintenance or
2 support revenue our revenue customers pay us, and they
3 expect for that to be able to receive support for
4 their products. They have questions about how to use
5 it or if they need fixes, they expect to get that.
6 And, equally, if our research and development groups
7 improve the product, they have access to those
8 improvements.

9 Q What's sorts of costs does Lawson have to pay to
10 provide that?

11 A Sure. The primary costs are headcount costs
12 related to the people who individual that support. So
13 if a customer has a question about how to use a
14 product, they call into our support line, and a person
15 helps them and answers their question.

16 Q Does money that Lawson spends on support benefit
17 the procurement configurations 3 and 5 at issue in
18 this cost?

19 A Yes.

20 Q How so?

21 A Well, looking at the two primary lines, you can
22 see they are in cost to support. Obviously, the third
23 party royalties, that benefits -- if we're paying --
24 if a customer is paying support or maintenance and we
25 need to remit to a third party as a result of this,

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1 that cost would be there. But then, obviously, if
2 customers with these combinations have questions about
3 how the product works, they call in, and our folks
4 help them. So they are employed to help on these
5 configurations, if you will.

6 Q If Lawson were to lose revenues for a significant
7 body of products, say for configurations 3 and 5, what
8 would happen to those costs?

9 A So the royalties would go away automatically.
10 There would be no revenue, ergo, there would be no
11 royalty to be paid.

12 With respect to support, that's an example of a
13 cost where we would take action to cut costs, but it
14 wouldn't happen automatically. So in our support
15 center, we look at call volume, the number of calls
16 that our support folks analyze.

17 If revenues go away, our products go away, call
18 volume goes down, and therefore we would cut costs as
19 a result of fewer calls and less activity.

20 Q Do you consider these costs to be variable as you
21 used that term earlier?

22 A Yes. Again, in our view, because we would be able
23 to and would take action quickly, like in days, weeks
24 or months, then I would call that variable.

25 Q The third category of the cost of sales you

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1 described is cost of services. You've already
2 described generally what that services piece is. What
3 kind of cost does Lawson have to incur to provide
4 services?

5 A So the primary cost of goods there are our actual
6 consultants. So those people who that out to
7 customers site, work with the customers to implement
8 their product, configure their product, make it work,
9 that's the primary cost in that cost of good.

10 Q And do costs of services that Lawson expends to
11 provide these consulting services benefit the products
12 at issue, Configuration 3 and 5 here?

13 A Yes.

14 Q How so?

15 A So again if a customer buys one of these products,
16 they need to have it implemented. They oftentimes
17 want to make specific changes to it. Therefore, they
18 hire our consulting group or third parties that run
19 through our consulting revenue line to go ahead and do
20 that work.

21 Q What would happen with respect to these costs if
22 Lawson were to refrain from seeking or accepting
23 service business as to Configurations 3 and 5?

24 A Sure. So similar some support, all of our
25 services or consulting people are focused on achieving

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1 revenue and margin targets. And if the demand didn't
2 exist because sales weren't occurring in a specific
3 area, we would cut back on cost, which could either
4 mean using fewer third parties or having fewer direct
5 employees focused on those areas.

6 Q Now, Mr. Samuelson, if you look under cost of
7 sales on Defense Exhibit 711, there's a reference to
8 gross margin. Do you see that?

9 A Yes.

10 Q What does gross margin refer to?

11 A Very simply, it's our revenues minus again those
12 cost of goods that are specifically allocable to
13 specific revenues lines.

14 Q Does the gross profit or gross margin of a company
15 account for all the money that the company has had to
16 spend in order to earn particular revenues?

17 MR. STRAPP: Objection, leading.

18 MR. DUSSEAUT: I can ask it in a different
19 way if you'd like.

20 THE COURT: Overruled.

21 A No. So our sales force, for example, those are
22 the people that are out actually selling the products.
23 It's an operating cost. The R&D, the people who
24 create the product, sits below gross margin. And then
25 the G&A are the finance people who spend the bills and

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1 collect the cash. All those are required to operate
2 the business and ultimately sell and deploy the
3 product.

4 Q If you're looking on the paper exhibit towards the
5 bottom of the page there's a reference to operating
6 expenses. Do you see that?

7 A Yes.

8 Q I believe you referred to that earlier, but if you
9 could just describe for the Judge generally what
10 operating expenses are as compared to cost of sales?

11 A Sure.

12 MR. STRAPP: Objection. Could I just ask for
13 a clarification? Are we talking in the abstract about
14 operating expenses or specific to Lawson or specific
15 to these products? It just seems to me to be unclear.

16 MR. DUSSEAU: I'll ask a different
17 question.

18 THE COURT: All right.

19 Q What does the line operating expenses on Defense
20 Exhibit 711 refer to?

21 A It's a summation of our sales costs, marketing
22 costs, R&D costs, and our G&A costs, effectively. So
23 those things that sit below cost of goods but that are
24 still costs.

25 Q Are these kept according to the GAP principles you

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1 referred to earlier?

2 A Yes. There, again, we don't decide where costs
3 are put on our profit and loss statement. GAP or
4 generally-accepted accounting principles dictates
5 that. So we record these where we're effectively told
6 to. And that's how the P&L takes this form.

7 Q Without explaining in detail what the categories
8 are, what are the general categories that make up
9 Lawson's operating expenses?

10 A Without explaining what they are?

11 Q Without explaining in detail at the moment.

12 A Okay. So sales, obviously those are all the costs
13 associated with selling our products. Marketing, the
14 costs associated with making our company name and
15 products known. Research and development are the
16 people actually writing the code that turns into our
17 products. And general administrative are finance, IT,
18 HR, and legal employees and costs.

19 Q Do you consider Lawson's operating expenses to be
20 variable?

21 A Yes.

22 Q Now, do you have an estimate based on your
23 experience of just roughly what percentage of Lawson's
24 operating expenses are variable?

25 A Sure. Again, for better or worse, a software

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1 company, and Lawson in particular, 70 to 80 percent of
2 our cost headcount. So in our view that's variable
3 because we can and oftentimes do take quick action
4 both to let people go if there's not demand or to hire
5 quickly in order to meet demand.

6 We don't have much of what I would call fixed
7 costs, like factories or we don't own buildings or
8 anything like that. So that's 70, 80 percent employee
9 base I would view as variable.

10 Then there's also things like commissions we pay
11 to our sales force that are completely variable. So I
12 would say 85 to 90 percent of our costs are truly
13 variable.

14 Q Does that 85 to 90 percent cost apply to each of
15 the categories of operating expenses that you
16 described?

17 A Roughly, yes.

18 Q Now, you talked about costs that vary
19 automatically versus those that require some action.
20 When you say 85 to 90 percent are variable, do you
21 mean automatically variable with some action or both?

22 A Both. Much of the cost would require some action.
23 It wouldn't happen automatically.

24 Q Now, for those costs that do not -- strike that.

25 Explain with respect to a cost that requires some

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1 action how Lawson would take that action and what
2 might prompt Lawson to take that action.

3 A Sure. So a good example would be sales. We have
4 a sales force. So sales reps whose job it is to go
5 out and sell our products. They are measured on
6 license revenue. And our managers are then measured
7 on the license revenue and the seven or eight sales
8 reps that they manage.

9 If there isn't demand, if a sales manager see that
10 sales reps are not selling as much as they should,
11 they would then cut the number of sales reps in order
12 to achieve the right ratio of sales to sales reps.
13 That would be an example of where management would
14 take action.

15 Q Did you have any actual experiences while you were
16 at Infor or Lawson where you had an opportunity to
17 observe the impact of a loss of sales on the amount
18 that the money spends on operating expenses?

19 A Yes. So we have many, many examples. Probably
20 the most obvious one is the recent economic downturn
21 where Infor and Lawson, like every other software
22 company, saw significant decline in revenues because
23 demand went away, but what you'll notice if you look
24 at our financials is our margins stayed intact. So we
25 continued to generate margins in the high 20, low

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1 30 percent range even though revenues were very
2 swiftly put into decline.

3 Q I take it that you might see a loss in the course
4 of Lawson's business that you viewed to be temporary?

5 A Sure. We would never take a cost cutting action,
6 particularly around headcount, if we believed that
7 demand would come back.

8 Q What would you do if you saw a loss of revenue
9 that you understood for some reason was to be a
10 permanent loss of revenue?

11 A We would clearly take cost action. Again, looking
12 at the economic example, that wasn't even permanent,
13 but we felt it would be protracted, so we took fairly
14 aggressive action.

15 Q Do you understand that in this case the Court
16 entered a permanent injunction as to Configurations 3
17 and 5 with respect to RSS?

18 A Yes.

19 Q Is that the sort of permanent loss that you're
20 referring to?

21 A Yes. If it was determined that we couldn't sell
22 specific products, and I guess I'm a little bit
23 confused because we did sell RQC.

24 MR. STRAPP: Object to foundation here about
25 the question. I don't think the witness has --

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1 there's been no establishment of foundation, the
2 witness has any personal knowledge about the impact or
3 non-impact of an injunction.

4 MR. DUSSEAUT: Let me ask a different
5 question.

6 Q You talked about permanent loss versus a temporary
7 loss. If you were to see a permanent injunction from
8 a court that says you cannot going forward sell
9 particular products, is that the sort of permanent
10 loss that you're talking about?

11 MR. STRAPP: I'm going to object again
12 because it depends on whether or not the party
13 complies with the injunction or continues selling some
14 replacements products. It seems like an incomplete
15 hypothetical.

16 THE COURT: I think he's assuming compliance
17 with -- the question assumes compliance with the
18 injunction, I believe, in the way it was worded.

19 A If for any reason we were to get no more revenue
20 on a specific product, we would take cost action to
21 make sure our margin stayed intact just like we did in
22 economic downturn example.

23 Q When you say "take action to make sure your
24 margins stay intact," what does that mean?

25 A That our margin levels stay approximately where

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1 they are.

2 Q Now, what I'd like to do is walk through the
3 categories of operating expenses in a bit more detail,
4 starting with sales. We've prepared a few graphics.
5 Can you just describe for us the basic types of
6 expenses that are involved in sales?

7 A Yes. So sales is primarily our sales force. So
8 those are the individual people who go to customers,
9 who go to prospects, talk about our products. We have
10 what's called presale, so those are the technical
11 consultants then give demonstrations of the products.
12 That's the support staff that sits around that sales
13 force.

14 And then our sales force is paid, and most sales
15 forces, are paid commissions. And so in the case of
16 our team, for approximately every dollar of license
17 sales they generate, they get about 15 cents
18 personally in commissions.

19 Obviously, there are their benefits like
20 healthcare are in that line. The cost to go and do
21 those sales like travel costs, all of things comprise
22 sales cost.

23 Q Are Lawson's sales cost variable in the sense that
24 you described when talking about these costs
25 generally?

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1 A Yes. Lawson is -- we are constantly looking at
2 demand and making adjustments to our sales force based
3 on where we see demand or lack thereof.

4 Q Are some of these costs within sales the type
5 where there would be an automatic variance?

6 A Commissions would certainly be automatic. So if
7 something isn't sold, no one is paid commissions. So
8 that element would be truly automatic.

9 But, again, the headcount, we would take actions,
10 which we do on a regular basis.

11 Q Do the sales costs that Lawson incurs in its
12 business generally benefit the products at issue in
13 this case, Configurations 3 and 5 of the procurement
14 software?

15 A Yes. In those cases, a sales force is required.
16 They are complex products. It's required to have a
17 salesperson. It's required to give demonstrations
18 with our pre-sales group, etc.

19 Q Does the sales force sell the SKUs or modules that
20 make up Configuration No. 3 and 5 at the same time
21 that it's selling other products?

22 A Yes.

23 Q Let's turn to marketing as a category of costs.
24 Again, we have a slide here. If you could just walk
25 the Court generally through the types of more specific

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1 expenses included in marketing?

2 A Sure. So there's a marketing staff. So we have a
3 group of people that are focused on marketing and
4 their salaries and benefits and the like are included
5 in that cost.

6 To the extent we do advertising, we do, for
7 example, online advertising where people search for
8 specific software types we pay Google to make sure
9 that our name comes up. There's advertising we do in
10 magazines, billboards, etc.

11 Q You described earlier, Mr. Samuelson, different
12 sort of levels of specificity, SKUs, configurations
13 and suites. At what level of specificity does Lawson
14 advertise products?

15 A It's what I would call a category level. So we
16 would advertise financials or human capital management
17 or HR software or manufacturing software. It would be
18 a little bit more unusual for us to -- we would never
19 advertise at a SKU level. It would be fairly rare to
20 advertise meaningfully at a module level.

21 Q Are marketing costs variable?

22 A Yes. Because -- yes.

23 Q How do they vary?

24 A Our marketing teams decide where to spend costs.
25 As a budgeting matter, we generally look at marketing

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1 cost as a percent of revenue. Again, if demand isn't
2 there, we have a tendency to cut back, again, in order
3 to keep our margins intact. If we see demand is
4 strong, sometimes we will spend more to continue to
5 generate demand.

6 Q How do Lawson's marketing costs benefit the
7 products at issue in this proceeding, Configurations 3
8 and 5?

9 A Sure. So, again, all of our advertising campaigns
10 that are around our financial products, if a customer
11 through those advertising campaigns becomes interested
12 and ultimately buys our products, those configurations
13 in question could be part of that sale.

14 Q The next category of expenses on the sheet is R&D
15 costs?

16 A Yes.

17 Q Again, we have a graphic. I notice we have a
18 hammer in this one, too.

19 A I was wondering.

20 Q Could you walk the Court very briefly through the
21 types of costs that Lawson incurs on research and
22 development?

23 A Sure. So the primary costs are our development
24 teams. So those developers that are writing in code
25 the products that we ultimately sell. Again, the

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1 benefits and the associated costs with those
2 engineers. But we also sometimes use third parties to
3 help us develop or get products to market more
4 quickly.

5 So that's also in that cost line. But it's
6 primary people costs.

7 Q Earlier in your testimony you referred to the
8 maintenance revenue stream. Do you recall that?

9 A Yes.

10 Q What if anything is the relationship between
11 earning money from maintenance on the one hand and
12 incurring research and development costs on the other?

13 A Sure. So when a customer pays maintenance, one
14 big reason that they pay is it entitles them to
15 updates and upgrades of the products that they have
16 purchased.

17 So let's say they buy financial software and tax
18 laws change. They want to make sure that that
19 software is able to capture those tax changes, for
20 example. Our R&D group would write those changes.
21 Then it would be released to that customer assuming
22 they were paying maintenance.

23 Q If Lawson were to discontinue offering a
24 particular product, say, a Punchout, would it continue
25 to incur any R&D type expenses for maintenance of that

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1 product?

2 A If we were no longer allowed to sell and no longer
3 allowed to support customers on a product, we would
4 not spend R&D dollars on it, no.

5 Q Do the developers at Lawson track specifically
6 what SKU or configuration they are working on when
7 they do their R&D?

8 A They do not.

9 Q Are R&D costs -- strike that.

10 In your experience generally in the company, in
11 the industry, as you mentioned, looking at software
12 companies, would it be common for researchers and
13 developers to track the specific module or SKU they're
14 working on?

15 A I've never seen that done before, no.

16 Q In your view, are Lawson's research and
17 development cost variable?

18 A Yes. Again, like the other costs that we've
19 talked about, when we see demand change for a specific
20 product, we adjust our R&D spending.

21 Q How does Lawson's R&D spending generally benefit
22 the specific products we're talking about here, the
23 Configurations 3 and 5?

24 A There's development time. And, again, there's a
25 little bit of a point of confusion. So the infringing

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1 product, RSS, related products, there's no development
2 going on there. Obviously, there's significant
3 development, much more so, frankly, than normal going
4 on around RQC.

5 Q Are you aware of any R&D costs that were incurred
6 specifically and uniquely in connection with
7 Configurations 3 and 5 after the Court's injunction
8 was entered?

9 A To clarify, to my knowledge there was no
10 development done on RSS related products, but there
11 was significant development done on RQC products. Is
12 that your question?

13 Q Yes, it is.

14 A Okay.

15 Q Let me ask a follow-up. What information do you
16 have or what are you aware of as to R&D spending on,
17 let's say, RQC?

18 A Earlier in the discussion, I talked about sort of
19 putting products in three tranches. Those that are
20 receiving an enormous amount of development expense
21 with minimal sales. So a disproportionate amount of
22 R&D spending. Those that I'll call middle of the road
23 products where R&D spending is kind of average and
24 consistent and we're still selling the product. And
25 those that are in what I'll call support mode where we

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1 don't necessarily sell new licenses. So there's
2 minimal development going on with very, very high
3 profits.

4 So in a normal course, the products in question
5 would fit into that middle category, but obviously we
6 spent disproportionately given all this activity.

7 Q Now, the final category of costs I want to cover
8 with you is G&A. So we'll put up another slide for
9 that.

10 If you could describe, Mr. Samuelson, what the
11 categories of general and administrative costs are
12 that the company incurs.

13 A Yes. So G&A costs are our whole finance
14 department, our legal department, our HR department
15 and our IT department.

16 Q Let's take legal first. Just very generally, what
17 does a legal department do?

18 A By and large, our customers when they buy one of
19 our products they negotiate a contract with us. They
20 are large purposes generally and complicated
21 purchases. So our legal team spends a lot of time
22 writing and negotiating those contracts. They also
23 assist with mergers and acquisitions. They are
24 involved in litigation. So all the things that a
25 department would do.

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1 But because of the complexity of our products and
2 business, there's a lot of time spent on contracts.

3 Q What does the IT department do? What function --
4 actually, let me ask a better question. What sorts of
5 things would the company spend on in the area of IT?

6 A So servers, laptops, IT infrastructure, basically.

7 Q What sorts of things would the company spend on in
8 HR?

9 A People costs. So our HR department is the largest
10 cost category. We sometimes use third parties like we
11 have advisers to help us pick the best benefits plan,
12 for example, but they are costs that are specific to
13 managing our human capital.

14 Q On the slide, I see to the right of finance,
15 there's a list of other categories. Are they sub
16 categories of finance?

17 A Right. Those are departments within our finance
18 department.

19 Q Are those areas in which the company would spend
20 money that you would categorize as finance?

21 A Correct. So we have to send bills. We collect
22 cash. We pay our taxes. We have people that manage
23 all of our bank accounts, and we obviously do a budget
24 and do annual planning.

25 Q Based on your experience at Infor and Lawson, do

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1 you consider Lawson's G&A costs to be variable in the
2 sense of including both automatically variable and
3 variable requiring some action?

4 A Sure. There aren't many automatically variable
5 costs in G&A, but, clearly, if we're doing less
6 business, that means we need to do fewer contracts in
7 our legal departments, send fewer bills, unfortunately
8 collect less cash. So, therefore, again, we look at
9 G&A as a percent of revenue and are constantly
10 adjusting our cost structure based on demand.

11 Q How do the costs that Lawson incurs for general
12 administrative expenses benefit a more specific
13 product like Configurations 3 and 5 here?

14 A There, again, if a customer were to purchase those
15 products, we'd need to write a contract with them.
16 We'd need to send them an invoice. We'd need to
17 collect the cash. So the G&A department has a role in
18 making sure that those products -- the business goes
19 on as long as those products exist, effectively.

20 Q Could Lawson earn revenues with respect to
21 Configurations 3 and 5 if it weren't spending money on
22 G&A?

23 A No, I don't think we could make money on any
24 products without a finance department, a legal
25 department, an IT department or HR department.

1 MR. DUSSEAUT: Thank you, Mr. Samuelson. No
2 further questions.

3 THE COURT: Any questions?

4 MR. STRAPP: Yes.

5 Could you put those slides back up on the
6 screen.

7

8 CROSS-EXAMINATION

9 BY MR. STRAPP:

10 Q Good afternoon, Mr. Samuelson.

11 A Hello.

12 Q You were talking about various categories of
13 operating expenses. And I'd like to discuss that with
14 you as well. And I think you had some demonstrative
15 slides. So perhaps we could just use those
16 demonstrative slides. And I'll ask you about the
17 various costs referenced on each slide.

18 Could you please put up slide 810, please.

19 Now, slide 810 refers to research and development
20 costs. Do you see that?

21 A Yes.

22 Q And are those also sometimes called in Lawson,
23 within Lawson, product development costs?

24 A Correct.

25 Q And the product development costs include, I think

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1 you mentioned, salaries, benefits and bonuses for
2 software developers employed by Lawson; is that right?

3 A That's correct.

4 Q And these developers usually work on more than one
5 product at a time, right?

6 A That's correct.

7 Q So these developers, for example, wouldn't be
8 specifically focused on, in this case, Configurations
9 3 and 5. They'd be working on other products as well,
10 correct?

11 A That's correct, although they would spend time on
12 Configurations 3 and 5.

13 Q Could you go to slide 808, please.

14 These are the operating sales costs I think you
15 referred to. These sales costs would include salaries
16 and commissions for all Lawson sales employees, right?

17 A That's correct.

18 Q The sales costs referenced here would include
19 sales events, and travel costs, and anything that's
20 related to actually going out and selling Lawson's
21 products, correct?

22 A That's correct.

23 Q Could you turn to slide 809, please. These are
24 the marketing costs, right?

25 A Yes.

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1 Q These include advertisement, B generation, and
2 product management employees as well, right?

3 A R&D employees would be in the R&D cost or product
4 management costs.

5 Q Could you turn to slide 811, please.

6 I think you mentioned that these general and
7 administrative costs, would they include, as well,
8 audit costs and costs associated with closing books
9 and financial offerings?

10 A Yes. Those costs that you just articulated are
11 also based on revenue. So our audit cost goes up as
12 we become bigger, unfortunately, and goes down when we
13 become smaller.

14 Q The G&A cost, I think you mentioned, include IT
15 infrastructure, as well, correct?

16 A As I mentioned, for example, laptops for
17 employees. That's our No. 1 IT cost line, which is
18 based on our employee size.

19 Q If Lawson paid for Microsoft Windows for its
20 employees, that would be included in G&A, right?

21 A That's correct.

22 Q Can you give me an example of a fixed cost that
23 would be a component of the general and administrative
24 costs of Lawson?

25 A Sure. A fixed cost would be -- let's say we owned

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1 a server. We would buy that server. It would have a
2 longer life. If our sales went way up or our sales
3 went way down, we would still own that server and its
4 value wouldn't change. That's not something we could
5 change quickly.

6 Q Most of Lawson's general and administrative costs
7 would probably be fixed, correct?

8 A Again, we're back to this definition of fixed
9 versus variable. Most of Lawson's G&A costs, if you
10 look at will they automatically vary? No. But would
11 we take actions in the event of a change in revenue?
12 Yes, we would.

13 Q Mr. Samuelson, do you recall being deposed in this
14 case on January 5, 2012?

15 A Yes.

16 Q Do you recall meeting with me for that deposition
17 in a conference room at Goodwin Procter's offices?

18 A Yes.

19 Q Do you recall Lawson's attorney, Mr. Dusseault,
20 was there as well, right?

21 A Yes, he was.

22 Q Do you recall that you swore an oath to tell the
23 truth at that deposition?

24 A I do.

25 Q And you understood at the time you gave the oath

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1 you were under the same obligation that you would have
2 if you were testifying in court here today, correct?

3 A Yes.

4 Q Can you please turn to the portion of the binder
5 in front of you that has your deposition transcript?

6 A Yes.

7 Q I want to direct you to page 319 of your
8 deposition. And if you could you turn to line 12.
9 Follow along silently as I read aloud from your
10 deposition.

11 "Okay. Can you give me an example of a fixed cost
12 that would, let's say, be rolled up under the general
13 administrative line here?"

14 Answer: "Fixed cost could be the people in the
15 department, could be the equipment that we use. It
16 could be our maintenance on our software that we use.
17 I would think most of, most of G&A would probably be
18 fixed."

19 Did I read that question and did I read your
20 answer correctly?

21 A It's read correctly, but a little bit out of
22 context, but yes.

23 MR. DUSSEAUT: Your Honor, I would object.
24 That's not proper impeachment. In the interest of
25 completion, I'd ask that page 319, lines 3 through 11,

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1 be read where the questions were specifically limited
2 to costs that varied directly with revenue.

3 MR. STRAPP: I don't think that's correct,
4 Your Honor. I think that 393 through 3911 is just a
5 basic definition of what fixed costs and variable
6 costs are.

7 MR. DUSSEAU: But, Your Honor, in the
8 testimony immediately preceding the question, he
9 offers a definition where he's talking about those
10 costs that vary directly or automatically, not those
11 that can be varied with action. It's not impeachment.

12 THE COURT: Overruled. You can deal with it
13 on cross-examination.

14 MR. STRAPP: Your Honor, I think that there's
15 actually the incorrect deposition transcript that was
16 pulled up on the screen. Do we have control of the
17 transcript here? I think that there's actually a
18 typographical error because the corrected transcript
19 that I have in front of me says that -- the last line
20 says, Most of G&A would probably be mixed, on the
21 screen.

22 We actually have the video of this deposition
23 transcript, and I would ask with your indulgence to
24 play this video portion.

25 THE COURT: My transcript says "fixed."

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1 MR. STRAPP: My transcript says "fixed" as
2 well. I would just say on the demonstrative that came
3 up on the screen, it says "mixed," M-I-X-E-D. In the
4 interest of avoiding any confusion here, I would just
5 play that 15-second video clip.

6 MR. DUSSEAUT: Your Honor, before it's
7 played, I can explain the situation. When the
8 transcript came out, it says "mixed." When we did a
9 cross-examination of their expert, we asked him about
10 the "mixed" because he had referred to it as "fixed."
11 There are questions about this.

12 The next day we got a call from the court
13 reporter service that they were changing it from
14 "mixed" to "fixed," at the request of ePlus's counsel.
15 The videotape says "fixed." But that's the background
16 of the change.

17 MR. STRAPP: Your Honor, I think just in the
18 sake of clarity, it's going to take less than 15
19 seconds. I would ask to be permitted to play it or if
20 you think that there's no need since the transcript
21 says "fixed," we can just proceed.

22 THE COURT: If you want to play it, play it.

23 MR. STRAPP: All right. Let's play it.

24 (The videotape is played.)

25 MR. DUSSEAUT: Your Honor, the same

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1 objection as to completeness as the preceding answer
2 referred to directly.

3 BY MR. STRAPP:

4 Q Could you pull up -- could we switch back to your
5 slides, please. Could you pull up slide 810. Could
6 you pull up 810.

7 These are the research and development costs we
8 referred to. These category of operating costs, they
9 include fixed costs, correct?

10 A There's fewer fixed costs in research and
11 development than G&A, for example, because it is
12 mostly people, but there would be some.

13 Q Is the answer to my question that product
14 development costs or research and development costs
15 include fixed costs, is the answer to that question
16 yes, sir?

17 A A very, very small amount of fixed cost would
18 exist in R&D, yes.

19 Q For example, a royalty paid by Lawson to use Java
20 internally is a research and development or product
21 development cost that would be a fixed cost, right?

22 A That's correct.

23 Q Could you turn to PX-1074 in your binder?

24 MR. DUSSEAUT: Is this the binder you have?

25 MR. STRAPP: It's your binder.

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1 THE COURT: Do you have that there, Mr.
2 Samuelson?

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 Q I think you mentioned earlier, Mr. Samuelson, that
6 this is a fiscal year 2011 profit and loss statement;
7 is that correct?

8 A That's correct.

9 Q And you are involved in the creation of this
10 profit and loss statement; is that correct?

11 A Again, I supervised the creation.

12 Q You have personal knowledge about the contents of
13 this document?

14 A Yes.

15 Q Now, in the creation of this document, Lawson did
16 not distinguish at all between fixed and variable
17 costs associated with licensing, maintenance and
18 consulting revenue, did it?

19 A We followed generally-accepted accounting
20 principles which don't break costs out in that manner.

21 Q Let me ask the question again and ask you if you
22 can fairly answer it yes or no. In calculating the
23 company-wide profit margins in PX-1074, Lawson did not
24 distinguish at all between fixed and variable costs
25 associated with licensing, maintenance and consulting

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1 revenue, did it?

2 A We followed generally-accepted accounting
3 principles. From a management perspective, we think
4 about the business by way of fixed and variable costs,
5 but that's not how GAP has us report numbers.

6 THE COURT: I think the answer is no.

7 THE WITNESS: No, right.

8 Q The answer to the question is no?

9 THE COURT: Yes, the answer is no.

10 Q Okay. Now, none of the costs associated with
11 product development can be specifically allocated to
12 revenues for infringing products and services, can it?

13 A So, again, we would look at the time spent on
14 developing those products and think about what the
15 costs would be associated with that. And there would
16 be costs there, yes.

17 Q So I'm not sure I understood your answer. None of
18 the costs associated with product development can be
19 specifically allocated to revenues for infringing
20 products and services; is that correct?

21 A Not in this P&L. This R&D line can't be allocated
22 to those costs, no. I don't quite understand your
23 question, to be honest.

24 Q Let's see if I can ask it a different way. Let me
25 just ask you a general question. Is it fair to say

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1 that none of the costs associated with product
2 development, sales and marketing, or general and
3 administrative costs can be specifically allocated to
4 revenues for infringing products and services; is that
5 a fair and correct statement?

6 A It's possible. That's not how we run our
7 business, though.

8 Q Let me ask you to turn back to your deposition
9 transcript. This is the deposition that you offered
10 on January 5, 2012. Do you recall that?

11 A Yes.

12 Q Do you recall you were under oath?

13 A Yes.

14 Q Could you turn, please, to page 100, line 4. This
15 is the transcript of your deposition, right?

16 A Uh-huh.

17 Q You had an opportunity to review this deposition
18 after it was taken and ensure that it was accurate,
19 correct?

20 A Yes.

21 Q Please follow along silently as I read aloud from
22 page 100, line 4.

23 Question: "Okay. Let me just ask you a general
24 question and let me, you know, you can tell me whether
25 or not I'm characterizing what you say correctly. Is

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1 it your testimony that none of the costs associated
2 with product development, sales and marketing or
3 general and administrative costs can be specifically
4 allocated to revenues for infringing products and
5 services?"

6 Answer: "Yes, that's correct."

7 Did I read that correctly?

8 A Yes.

9 Q Now, sir, you said on your direct testimony that
10 there were significant development costs regarding RQC
11 products. Was that -- is that a correct summary of
12 your testimony?

13 A Yes.

14 Q I think you characterized it as disproportionate
15 costs; was that correct?

16 A Correct.

17 Q When you said "disproportionate," what did you
18 mean by disproportionate?

19 A I mean relative to the revenue from those
20 products, we invested a lot in R&D relative to what we
21 would invest on average for a product that's producing
22 that level of revenue.

23 Q Let me hand up to you here --

24 THE COURT: Are you saying that the R&D costs
25 were significant measured against the revenue received

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1 for RQC or that they were absolutely significant?

2 THE WITNESS: Relative to the revenue.

3 Q Were the costs to develop, install, implement and
4 maintain RQC significant?

5 A Relative to the revenue, yes.

6 Q What, approximately -- do you have an approximate
7 idea of what the revenue was earned from this product
8 over the last -- since it was introduced, let's say,
9 in May 18, 2011?

10 A That's not something I know off the top of my
11 head, no.

12 Q How do you know it was a significant cost relative
13 to the revenue if you don't know what the revenue was?

14 A I know it was less than a couple of hundred
15 million dollars during the years in question, and I
16 know we spent a lot of time as a team talking about it
17 and working on it, and I know a lot of development
18 work was put into it. So relative to other products
19 that are that size or smaller, I know it received a
20 lot of attention.

21 Q Would it be fair to say that the revenue was more
22 than a million dollars?

23 A Yes. Again, I don't know the revenue from
24 inception, which was your question. The time in which
25 I was involved in it, it was more than a million

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1 dollars.

2 Q And the cost to develop, install, implement and
3 maintain as compared to that revenue was
4 disproportionate; that's your testimony?

5 A The amount of -- yes, I believe that there was
6 more work put into those products as a result of all
7 this activity than would normally be put into them.

8 MR. STRAPP: Can I hand up to the witness
9 what's been previously marked and admitted as PX-1259.

10 Q Now, the document you have in front of you is
11 Defendant Lawson Software's answers to plaintiff's,
12 ePlus, first set of interrogatories for contempt
13 proceeding. Do you see that?

14 A Yes.

15 Q The title page?

16 A This is from 12-29-11?

17 Q Yes. Maybe I could ask you to just turn to the
18 second to last page here of the document. There's a
19 subtitle verification. Do you see that?

20 A Yes.

21 Q Do you see that that says the undersigned has read
22 the contents of defendant Lawson Software's objection
23 and answers to plaintiff ePlus's first set of
24 interrogatories for contempt proceedings dated October
25 7, 2011, and knows the contents thereof and that the

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1 contents and facts therein contained are true and
2 correct to the best of hers/her information, knowledge
3 and belief, and that his/her information, knowledge
4 and belief is based on facts obtained by others from
5 corporate records, employees agents. Do you see that?

6 A Yes.

7 Q Did I read that correctly?

8 A Yes.

9 Q Do you see that's signed by someone named Dale
10 Christopherson?

11 A Yes.

12 Q I ask you to turn to interrogatory No. 10. It's
13 about midway through the document. There's no page
14 numbers, but you'll find it because they are in
15 sequential order.

16 A Okay.

17 Q I ask you to turn first to the interrogatory and
18 the question, if you could read it into record,
19 please?

20 A Uh-huh.

21 Q I'll read it into the record. It says, "Identify
22 the cost to develop, install, implement and maintain
23 RQC measured both on an overall basis and on a
24 customer by customer basis." Do you see that
25 question?

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1 A Yes.

2 Q Do you see that there is an answer below that was
3 provided by Lawson and verified as true by the
4 company?

5 A Uh-huh.

6 Q I'd ask you to turn to the second sentence of the
7 answer as I read it aloud. It says, "Without waiving
8 the forgoing objection, Lawson states, Lawson devoted
9 at least 735 development hours to the development of
10 the RQC product. Those hours equate to an estimated
11 cost of \$35,000." Did I read that correctly?

12 A Yes.

13 Q Would you consider \$38,000 of development costs to
14 be disproportionately significant for a product that
15 in your estimation has earned at least a million
16 dollars?

17 A If those were the only costs that ever went into
18 the product, I wouldn't say that.

19 Q Let's talk about some additional costs that are
20 mentioned here. Do you see it says, "Additionally,
21 Lawson incurred opportunity costs by devoting
22 developers to the RQC project"?

23 A Yes.

24 Q And that beyond the developer time associated with
25 writing the code for RQC, Lawson also incurred

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1 additional costs associated with other teams that were
2 required to inspect and test the RQC product during
3 the development and launch process. Did I read that
4 correctly?

5 A Yes.

6 Q Do you see that the next sentence that all of
7 those additional costs are estimated to be \$75,000?

8 A Yes.

9 Q Would you consider if I added those two numbers
10 together, 75,000 plus 38,000, that those two numbers
11 in the aggregate are disproportionate costs as
12 compared to revenues for a product that earned at
13 least a million dollars?

14 A Again, if those were the only costs ever incurred,
15 then that would not be disproportionate.

16 Q Let me just point you -- I think there is an
17 additional category of costs referenced here. So in
18 the interest of completeness, if you could turn to the
19 third page of this interrogatory answer, at the top,
20 do you see that it says, Additionally, Lawson's
21 development team has incurred approximately \$10,000
22 per month on maintenance cost associated with the RQC
23 product? Did I read that correctly?

24 A Yes.

25 Q All right. Now, with these three categories of

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1 costs that Lawson identified in the aggregate as being
2 relevant or associated in any way with RQC, is it
3 still your opinion that those costs are
4 disproportionately large as compared to revenues for
5 the product?

6 A Again, no, if that was the only spending that
7 occurred.

8 Q What additional spending and costs are you aware
9 of that Lawson did not provide ePlus in its
10 interrogatory responses?

11 A I assumed that there have been costs subsequent to
12 these interrogatories to continue to build and advance
13 the product.

14 Q That's an assumption. You don't have any personal
15 knowledge about that; is that correct?

16 A I certainly know I've been on calls with people
17 and discussed this and know that work had gone on. I
18 don't know the specifics of the work.

19 Q Can you identify for us here in court any specific
20 additional costs that Lawson failed to include in its
21 interrogatory responses, yes or no?

22 A I know work has gone on subsequent to this
23 interrogatory, but it's not something I have
24 memorized.

25 MR. STRAPP: I move to strike that answer as

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1 nonresponsive.

2 Q Can you answer the following question?

3 THE COURT: Do you want me to rule on the
4 motion?

5 MR. STRAPP: I'm sorry, Your Honor.

6 THE COURT: Or did you rule already?

7 MR. STRAPP: I should await your ruling.

8 THE COURT: Any comment?

9 MR. DUSSEAULT: Your Honor, I think Mr.
10 Samuelson is just trying to explain that when there
11 are certain costs that are identified here, those
12 aren't necessarily all the costs that relate to the
13 product itself. There may be costs that go into the
14 development of RQC because of the injunction, but
15 there could be other R&D or other related costs and
16 costs incurred after the injunction. He's explained
17 his answer.

18 THE COURT: I think you may be right, but I
19 also think it's nonresponsive. Objection sustained.
20 The answer is stricken.

21 Ask it again. Please listen to the question
22 and answer, if you can.

23 BY MR. STRAPP:

24 Q Can you identify any additional specific costs
25 that Lawson failed to provide in its interrogatory

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1 response that are directly associated with RQC as you
2 sit here today?

3 A No.

4 MR. STRAPP: Thank you. No further
5 questions.

6

7 REDIRECT EXAMINATION

8 BY MR. DUSSEAUULT:

9 Q Just very briefly. Mr. Samuelson, Mr. Strapp
10 asked you about your testimony concerning fixed and
11 mixed costs. Do you recall that?

12 A Yes.

13 Q You read your deposition testimony where you were
14 talking about G&A costs and talking about fixed vs.
15 mixed; do you recall that?

16 A Yes.

17 Q Do you believe that the deposition testimony that
18 was read to you is inconsistent with the position
19 you've taken today?

20 A No.

21 Q Would you like to explain, because Mr. Strapp
22 didn't want to give you that opportunity, would you
23 like to explain why you believe that they are
24 consistent?

25 MR. STRAPP: Objection, Your Honor. He's

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1 asking for the witness to comment on his own
2 testimony. It's asked and answered. I've already
3 gone over this testimony.

4 THE COURT: I think he has a right to explain
5 his answer. Overruled.

6 A Yes. Multiple times during the deposition this
7 subject came up and I think I was clear on multiple
8 occasions. There is the what I'll call the
9 theoretical deposition of a cost automatically
10 changing with revenue, but also the practical
11 definition that we work with where we do adjust our
12 costs manually when revenue changes.

13 I think I gave multiple examples in the deposition
14 in areas such as G&A and others where we do that on a
15 regular basis.

16 Q Mr. Samuelson, Mr. Strapp also pointed you to
17 Exhibit 1074. And he asked you whether Lawson
18 distinguished between fixed costs and variable costs
19 on that document. Do you recall that?

20 A Yes.

21 Q I believe you tried a few times to explain why,
22 some reference to GAP. What explanation do you want
23 to provide, sir?

24 A So, again, GAP dictates how we record our
25 financial statements. That's not necessarily how we

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1 operate our business. And we certainly operate our
2 business through the lens of fixed versus variable
3 costs and commonly take actions and reduce costs when
4 revenues fall away. And I gave examples of the
5 economy. I can give lots of other examples.

6 So I don't think opining on how GAP asks us to put
7 our financial statements together is any indication of
8 how we actually operate our business.

9 Q Mr. Samuelson, Mr. Strapp also asked you some
10 questions about whether costs could be specifically
11 allocated to specific products. Do you recall that?

12 A Yes.

13 Q Could you explain in a little more detail, sir,
14 what you mean when you say costs can't be specifically
15 allocated to specific products?

16 A Yes. So, again, I think the difference between
17 the deposition and today, is today, in theory, you
18 could probably go off and venture some project, at a
19 SKU level assign costs. Again, that's not how we
20 operate our business, but when we do see revenue fall
21 away or if we were not allowed to sell a product, we
22 would absolutely take cost action.

23 And specific to his example around R&D, developers
24 spend time on these products. That time then would
25 open up, and we would either costs or if there was

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1 growth somewhere else that could take that revenue
2 away, we could put them to work on those types of
3 products.

4 Q To the extent that you've stated in the past that
5 cost can't be specifically allocated to a particular
6 product, do you mean to communicate one way or the
7 other with that that the costs aren't necessary to
8 support that product?

9 MR. STRAPP: Objection, leading.

10 THE COURT: Overruled.

11 A If your question is are these costs required --
12 are all these costs that we discussed required to sell
13 these products, the answer is yes.

14 Q To the extent you said in the past that the cost
15 can't be specifically allocated to the product, did
16 you mean to communicate that you don't know whether
17 the costs play some role in earning revenue for the
18 product?

19 A These costs clearly play a role in generating
20 revenue. I'm not sure I understood your question, but
21 --

22 MR. DUSSEAU: I think you did. Thank you.
23 That's all I have.

24 THE COURT: Can he be excused permanently?

25 MR. DUSSEAU: He may.

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1 MR. ROBERTSON: Yes, Your Honor.

2 THE COURT: Mr. Samuelson, thank you for
3 being with us and giving us your testimony. You're
4 permanently excused.

5 (The witness was excused from the witness
6 stand.)

7 MS. ALBERT: EPlus is going to recall Dr.
8 Weaver to the stand.

9 THE COURT: I remind you, Dr. Weaver, you are
10 under the same oath that you took earlier, sir.

11 THE WITNESS: Yes, Your Honor.

12

13 ALFRED WEAVER, recalled by the Plaintiff, having
14 been duly sworn, testified as follows:

15 DIRECTION EXAMINATION

16 MS. ALBERT: I think we were on Plaintiff's
17 Exhibit 1135. And if I didn't already do it, I'd like
18 to move that into evidence.

19 THE COURT: Any objection?

20 MR. THOMASCH: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Plaintiff's Exhibit No. 1135 is admitted.)

23 MS. ALBERT: Then along with that we have
24 Plaintiff's Exhibit 1135A, which are the screen shots
25 for the video. I'd like to move the admission of

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1 those as well.

2 MR. THOMASCH: No objection.

3 THE COURT: Well, in my book here they are
4 labeled 35 and 34. I don't have any 35A.

5 MR. STRAPP: Your Honor, maybe I can just
6 point out, if you look at the bottom right on each
7 individual page, you'll see the 35 or 35A on the
8 actual screen shots themselves.

9 MS. ALBERT: We could put an exhibit sticker
10 on the actual copy.

11 MR. STRAPP: Yes.

12 MS. ALBERT: For the Court.

13 THE COURT: Yes, I see. I see what you're
14 saying. All right.

15 BY MS. ALBERT:

16 Q Now, Dr. Weaver, we're going to play the video for
17 Plaintiff's Exhibit 1135. And then can you tell us
18 what we're seeing as it proceeds, and then also refer
19 us, if you could, to the paper screen shot associated
20 with the video?

21 A I'll try to do that. It will be a little bit
22 awkward, of course, to start and stop and get the
23 screen to register exactly with the page, but Armando
24 and I will do our best here.

25 So we're at the login screen. So play. Stop. So

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1 this corresponds to your screen shot labeled
2 PX-1135A001. So since there are, let's see how many,
3 51 slides in this deck, I'll just refer to them as
4 slide 1, slide 2, etc.

5 So this is slide 1. So what I'm trying to
6 demonstrate is that a system with RQC can practice the
7 first five elements of Claim 26.

8 Play. Stop. Okay. Play. Stop. Play. Stop.
9 All right. Now I'm going to see if I could draw with
10 a pen that would be less weighty than my finger. And
11 the answer is no.

12 Q You were drawing an arrow to indicate a tab on the
13 screen?

14 A I was, but let me just start at the beginning.
15 Let me note up here that in the navigation bar on the
16 left, there would be the opportunity to use
17 requisition self service, the old RSS, which was
18 operational on the demonstration system along with the
19 new RQC. So I have now chosen the RQC navigation.
20 It's opened the drop down menu. And I'm about to
21 click on the shopping tab.

22 Q And the video corresponds to which slide?

23 A This would be slide 2.

24 Play. This is the one that takes a moment to
25 load. Stop. So now we have entered the Lawson

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1 requisition center. Again, it's hard to see, but
2 there it is. And we're going to go up to the
3 find/shop tab and click on that. That will open a
4 drop down menu. And the bottom choice there will be
5 "categories," and that will be slide 3.

6 Q Which catalogs does the categories search feature
7 search?

8 A That searches all the catalogs in the item master.
9 Play. Stop. Well, we just passed slide 3, but
10 you saw that. So let's continue. It's going to load
11 now the catagory hierarchy tree.

12 So we're moving towards slide 4. Play. Stop. So
13 here at the top where the arrow is, this is the
14 beginnings of the list of the catagory hierarchy tree.
15 And in this example this corresponds to the top level
16 of the UNSPSC codes.

17 So what we're going to do is scroll down until we
18 find a top level category that's related to computers.
19 So this is slide 4. And we're moving towards slide 5.

20 Play. Stop. So we're still at the top level of
21 the UNSPSC codes. And we have found a catagory that
22 says "communications and computer equipment and
23 peripherals, and components, and supplies."

24 Here in slide 5, I've just clicked on that, and
25 that's starting to load. And that's going to take us

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1 to a drill down to the second level of the UNSPSC
2 code, and we're going to slide 6.

3 Play. Okay. So we just blew through slide 6.
4 And now we have arrived at hardware and accessories.
5 This is the second level of the UNSPSC codes.

6 THE COURT: So far we're on the first step of
7 Claim 26?

8 THE WITNESS: Correct, Your Honor.

9 THE COURT: You're going to tell us when we
10 leave step 1 and go to step 2 or element 1 and element
11 2?

12 THE WITNESS: I can do that. And I was
13 certainly going to summarize that at the end.

14 THE COURT: It would help me if I know when
15 you're moving.

16 THE WITNESS: Okay.

17 THE COURT: So if you get a chance, when you
18 go from one step to the other.

19 A So what we're seeing here is both, the maintenance
20 of -- we're going to see the multiple product catalogs
21 in the item master. So we're beginning the step of
22 searching to find -- rather to select product
23 catalogs, and we're just about there.

24 MR. THOMASCH: Objection, Your Honor. The
25 witness just skipped past the first claim element and

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1 did not identify as the Court asked where that
2 occurred. And I believe in so doing the witness made
3 a statement of fact that's inconsistent with the prior
4 jury verdict.

5 THE COURT: I don't understand.

6 MR. THOMASCH: In other words, the witness --
7 you asked about the first element. The first element
8 is maintaining at least two product catalogs.

9 BY MS. ALBERT:

10 Q Dr. Weaver, do you understand whether or not
11 multiple product catalogs are maintained in the item
12 master?

13 A Absolutely, they are.

14 Q Will we see that as we proceed in the
15 demonstration?

16 A Yes, we will.

17 MR. THOMASCH: Your Honor, I'll just note my
18 objection. This is one of the instances -- this is a
19 video that relates to Claim 28 where when only used
20 with item master the jury rejected the claim, and
21 there is no -- I do not believe that this is a fact
22 that has been established in litigation. The witness
23 just treated it as an established fact.

24 THE COURT: He's talking about Claim 26, not
25 Claim 28.

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1 MR. THOMASCH: It's the exact same claim
2 element.

3 THE COURT: So what difference does it make?
4 If you're talking about one in one place and one in
5 the other, it's the same thing. You're talking about
6 the same thing. Your objection is noted.

7 I guess all I'm saying is that I'd like to
8 know as we go through at some point which slides I can
9 go to to find the first element, and then the second,
10 and the third, and the fourth, and the fifth. So that
11 later when I'm looking at it I can understand which
12 slides correlate to which ones to the extent that that
13 can be done. You can do that at the end of your
14 testimony if you want to .

15 THE WITNESS: I think, Your Honor, since
16 these activities are somewhat distributed, it might be
17 cleaner at the end as I go through each one and
18 explain what I did.

19 THE COURT: All right.

20 THE WITNESS: And how it maps to elements 1,
21 2, 3, 4 and 5.

22 THE COURT: All right. That's fine.

23 THE WITNESS: Okay.

24 A Okay. So we're pretty much on slide 6. We're
25 ready to click this second level link and drill down a

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1 bit more. So play. Stop.

2 THE COURT: I don't have any picture, but
3 just go on, and I'll follow along with the slides. Go
4 ahead.

5 A All right. So we need to move just a little more
6 to get the same image that is on slide 7.

7 So let's go forward but we'll stop real fast.

8 Play. Stop. Okay. So now I've clicked on that
9 computer's link, and we're at the third level of the
10 UNSPSC codes. And now we are searching for all items
11 from all vendors in the item master that are coded to
12 the UNSPSC code for computers. So that's displayed on
13 this slide as 43-17-8.

14 So now we're ready to move to slide 8. Play.
15 Stop. So we've now searched for all the items from
16 all the vendors in the item master that are coded to
17 the UNSPSC class for computers, and we see because
18 this is a demonstration system, there are only five
19 products in the item master, but that's enough for the
20 demo.

21 THE COURT: In other words, the real item
22 master would come up with more products than the five
23 listed here?

24 THE WITNESS: Yes, sir.

25 THE COURT: This item master, for purposes of

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1 the demonstration, has been confined to have five of
2 these items; is that right?

3 THE WITNESS: Yes, Your Honor, you're
4 correct.

5 THE COURT: All right. Thank you.

6 A And so as we look at the items, the five items in
7 the item master that are coded to computers, we'll see
8 this first one is an IBM ThinkPad. The second one is
9 a Dell Inspiron computer. There are three more, but
10 I'm just going to use the first two.

11 All right. Now we're ready to move on. So play.
12 Stop. So now I'm ready to inquire more deeply about
13 the description of the IBM ThinkPad.

14 Q Which slide are you on now?

15 A I'm on slide 9. Thank you.

16 So I'm about to click on the item number for the
17 IBM ThinkPad to learn more about it.

18 So we're moving towards slide 10. Play. Stop.
19 So this is the item detail page that results from
20 looking at the ThinkPad. So here on slide 10, here's
21 the item description. Here's the IBM ThinkPad.
22 Here's the cost, \$2,500. And here is the vendor,
23 Office Max. And as we --

24 THE COURT: In other words, you've gone from
25 8 to 9 you have identified five. Gone from five to

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1 pick the one that you want on 9. Do you think the
2 ThinkPad is the best one. And then you go -- now
3 you're on 10 and you have got the ThinkPad listed and
4 keyed to a vendor.

5 THE WITNESS: Exactly right, Your Honor.

6 THE COURT: All right.

7 A What I'm going to do next, and this is just the
8 way the screen shots came out, I'm going to scroll
9 down, and that's going to be slide 11, but it doesn't
10 add any information. So we'll scroll back up and
11 we'll be on slide 12. But I'll tell you where we are.
12 We're on slide 10. And play. Scroll down.

13 That's slide 11. Scroll back up. Stop. And
14 that's slide 12, plus just a little bit. So what has
15 happened is that I've decided that I want to select
16 this IBM ThinkPad. So I have clicked on the add
17 button. And what this is going to do is to move the
18 ThinkPad into the requisition lines up here.

19 So, really, now we're on slide 13 where I'm about
20 to add the IBM ThinkPad to the requisition lines.

21 So moving towards slide 14. Play. Stop. So now
22 the ThinkPad is up in requisition lines.

23 Q That's slide 14?

24 A And that's slide 14. Thank you for reminding me
25 to identify the slide.

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1 Okay. So now I've put the ThinkPad up in
2 requisition lines. Now I'm having second thoughts
3 about the price of that item. So I want to go back
4 and look at the items in the item master and see if I
5 can find a better deal on a computer.

6 So I'm going to go over here and click the back
7 button, and that will move us towards slide 15. So
8 play. Stop. So now we're back to the screen that we
9 saw earlier where it's listing the five items that
10 were coded to computers.

11 So now as I look at this, I'm thinking, well, here
12 is the Dell Inspiron for \$2,000. And if that will do
13 the job, it will save me 500 bucks. So I'm going to
14 look at the item description by clicking on the item
15 number, 6020.

16 So this is slide 15. And we're headed to 16.
17 Play. Stop. So here I've highlighted the second
18 item. The Dell computer. And I'm about to select
19 that by clicking on the item number. Play. Stop.

20 So now I'm on slide 17. And this is the item
21 description page. So here is the item description.
22 Dell Inspiron 8,000. Here's the price. \$2,000.
23 And --

24 THE COURT: Ever since you put first the
25 ThinkPad in the requisition, it stayed up there?

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1 THE WITNESS: Yes.

2 THE COURT: It's still up there for you to
3 look at and compare your price to on the Dell?

4 THE WITNESS: That's right.

5 THE COURT: And you went back?

6 THE WITNESS: I'm comparison shopping.

7 THE COURT: You're comparison shopping. You
8 went back and you found on slide 15, you kept the IBM
9 on the requisition, and on slide 15 you went back and
10 took a good close look there at the Dell. Looked at
11 the price. It's 2000 instead of 2500. Said I'm going
12 to go look for the Dell. And now you're looking for
13 the Dell.

14 THE WITNESS: That's right. I've the item
15 description of the Dell here on slide 17.

16 THE COURT: And you have gone to the Dell on
17 16 and 17. All right.

18 A And I see in the item description that the vendor
19 is Diablo. So that's different from the ThinkPad,
20 which was Office Max.

21 THE COURT: Where is the vendor?

22 THE WITNESS: Well, it was in the item
23 description back on slide 10.

24 THE COURT: Diablo.

25 THE WITNESS: Slide 10 was showing that the

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1 vendor for the ThinkPad was Office Max.

2 THE COURT: Right.

3 Q Who is the vendor for the Dell Inspiron?

4 A That's Diablo on slide 17 where we are now.

5 THE COURT: Where on 17 is the vendor named?

6 THE WITNESS: Right here.

7 Q What's the label above?

8 THE COURT: I see.

9 THE WITNESS: Source vendor.

10 THE COURT: Source vendor name.

11 THE WITNESS: Right.

12 THE COURT: All right. Go ahead.

13 A So now what I'm going to do is, moving towards
14 slide 18, I'll be adding this Dell computer to the
15 requisition lines. And then ultimately I'm going to
16 delete the IBM. So we'll play to see me click the add
17 button here.

18 Play. Stop. We just went a little too far.
19 That's my fault. We went past slide 19 where we saw
20 the pop-up that said adding the Dell Inspiron to the
21 requisition lines. And now we are at slide 20.

22 THE COURT: And you have got both of them on
23 there?

24 THE WITNESS: Exactly. We've both of them
25 here on requisition lines. We've got both the IBM and

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1 the Dell.

2 THE COURT: If you wanted to buy both of
3 them, could you buy both of them by asking for a
4 requisition for each one of them?

5 THE WITNESS: You certainly could. It would
6 be one requisition with both on it and you would
7 generate two purchase orders because they are two
8 different vendors.

9 THE COURT: Right. Okay. But the
10 requisition would be one and it would have both of
11 them on there?

12 THE WITNESS: Exactly right.

13 THE COURT: Okay.

14 A So we're on slide 20. I'm now ready to delete the
15 ThinkPad. So moving towards slide 21. Play. Stop.
16 So I've highlighted the ThinkPad. I've put my pointer
17 here on the delete button. The X in a circle. And
18 I'm going to click on delete and remove the ThinkPad
19 from requisition lines. And that will give us a
20 pop-up that we see on slide 22 that gives me a second
21 chance. When I'm doing a delete, you want to be
22 careful. It will give me a second chance to think
23 about that command to delete.

24 So play. Stop. Play. Stop. So here is that
25 second chance. Do you really want to remove this

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1 line? Well, I really do. So I'm going to click on
2 yes, and that's going to take us here from slide 22 to
3 slide 23.

4 Play. Stop. So now if you look at requisition
5 lines, the ThinkPad is gone and the Dell computer
6 remains. So I'm happy with that.

7 Now I'm going to shop for something entirely
8 different. So what I'll do is go up here to find and
9 shop. That will open the same drop down menu that we
10 saw before. I'll click on the same bottommost choice
11 of categories. And that will take us back to the
12 category hierarchy tree.

13 Q What catalogs can be selected to be searched using
14 the catalogs hierarchy tree?

15 A It's the catalogs in the item master. All right.
16 So we're on slide 22 moving toward 23. Play. Stop.

17 So here's slide 23 where I've clicked on
18 categories. So I'm going to go back and go through
19 the category hierarchy tree again. Play.

20 THE COURT: Because you want to look for
21 another kind of product.

22 THE WITNESS: Right. Something completely
23 different. Not a computer at all.

24 THE COURT: A Nubian goat.

25 THE WITNESS: It could have been.

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1 A All right. Where are we? Slide 24. So we have
2 gone back to the categories hierarchy tree. And we're
3 back at the top level of the UNSPSC codes. And we're
4 going to scroll down until we get to the catagory
5 about laboratory equipment. So let's see that to make
6 this into the screen shot of slide 24.

7 So we'll play. Stop. Well done. Okay. So we
8 landed right where we're supposed to be. This is
9 slide 24. So this top level of the UNSPSC code is for
10 laboratory and measuring and observing and testing
11 equipment. So that's how I'm going to get to my next
12 product.

13 So we're headed to side 25. Play. Stop. Okay.
14 To make this slide 25, I'm going to click on the top
15 of the second level choices. Laboratories and
16 scientific equipment.

17 And thank you, Armando. That puts us exactly on
18 slide 25.

19 So I've just done the click. Now I'm doing the
20 load. And that's going to take me to the third level
21 choice on slide 26.

22 Play. Stop. So, again, because this is a
23 demonstration system and the database is small, and
24 the catagory hierarchy tree is sparse, as I get down
25 to the third level, now there's only one choice, and

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1 that's this laboratory environmental conditioning
2 equipment.

3 So I'm going to take that third level choice, and
4 that's going to, again, bring up all the items from
5 all the vendors that are in the item master.

6 THE COURT: Vendors of products of that kind?

7 THE WITNESS: Exactly right. Coded to this
8 third level category of laboratory environmental
9 conditioning equipment.

10 THE COURT: And you come up with two?

11 THE WITNESS: And I'm about to come up with
12 two. That's right.

13 A So let's play. Stop. So now we're on slide 27.
14 So we're at our third level of the categories. And I
15 have exactly two choices. I can get a case of sterile
16 surgical gloves, size 7, or I can get a case of
17 surgical gloves, size 8.

18 So why don't we make a choice of the size 7 gloves
19 and get us to slide 28. So play. There we are.
20 Stop.

21 So here I've selected the sterile gloves, size 7.
22 I'm clicking on the item number, and as we saw before,
23 that brings up a description. So we'll move ahead to
24 get the item detail page.

25 Play. Stop. So here is the item detail page.

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1 There's the glove.

2 THE COURT: Slide 29?

3 THE WITNESS: Thank you. I am on slide 29.

4 A There's the description. Gloves, sterile,
5 surgical, size 7. There's cost, \$400. And here under
6 source vendor is the name of the vendor, which is
7 Baxter Healthcare.

8 So what I'm moving toward now is adding that to
9 the requisition lines so that I can build a
10 requisition with two items from two separate vendors,
11 two different vendors.

12 All right. So we're moving toward slide 30 by my
13 clicking on the add button here in slide 29.

14 All right. So stop. Let's see. What did I do?
15 This was just scrolling down the page and back. So we
16 can continue. Play. There's the add.

17 THE COURT: Slide 31 is adding it?

18 THE WITNESS: Right.

19 THE COURT: And you haven't added it item
20 description yet?

21 THE WITNESS: I just did.

22 THE COURT: When you get to slide 32, it's on
23 the requisition?

24 THE WITNESS: Right.

25 A Due to the difficulty of controlling the timing of

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1 this, we're now on slide 32 where we have successfully
2 added the case of surgical gloves to the requisition
3 lines.

4 So now what I'm going to do is go down here and
5 click on the release button. And this is going to set
6 in motion the steps necessary to build a single
7 requisition containing two items from two different
8 catalogs.

9 So moving toward slide 33. Play. Here comes my
10 click on release. Stop. Now I'm on slide 33 where I
11 am releasing. Releasing here means that we're putting
12 the information from the requisition lines, which is
13 the description of the items together with the vendor
14 information in order to build a requisition with two
15 items from two different vendors.

16 THE COURT: You said you were building a
17 single requisition from two different catalogs. Those
18 two catalogs being Office Max --

19 THE WITNESS: Office Max and Diablo.

20 THE COURT: No. Excuse me. Diablo and
21 Baxter.

22 THE WITNESS: That's right, yes. I deleted
23 Office Max when I deleted the ThinkPad.

24 THE COURT: Officer Max had the ThinkPad.

25 THE WITNESS: So that left me with the Dell

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1 from Diablo and these gloves from Baxter.

2 THE COURT: Right.

3 THE WITNESS: Thanks for helping me out.

4 A Okay. So we're releasing and we're moving towards
5 slide 34.

6 Continue. Stop. So now we're on slide 34, which
7 tells us that the requisition has been successfully
8 submitted, and its number is 1045.

9 So I'm going to click on the okay button to
10 dismiss this pop-up window. And that take us back to
11 Lawson home on slide 35.

12 So play. Stop. Okay. So we're back to Lawson
13 home. And what is a little bit subtle on this slide
14 is that now what I'm going to do is run the purchase
15 order creation module, which is the PO 100 program.
16 So up here in incredibly dim --

17 Q I'm not sure that --

18 A It hasn't come up yet.

19 Q No.

20 A So, Armando, we have to go forward just a little
21 bit. Play. Stop. Thank you.

22 So up here in the corner I can run programs in the
23 Lawson procurement system. So I've typed in PO 100,
24 which is the purchase order generation program.

25 THE COURT: Are you on slide 36?

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1 THE WITNESS: 35.

2 THE COURT: I see.

3 A So I'm just about to run the program. So when we
4 go forward, we'll run PO 100 and we'll see what its
5 user interface looks like.

6 Play. Stop. So now you see we're on the purchase
7 order interface for Lawson applications, PO 100.

8 So in order to go from a requisition to a purchase
9 order, I've got to add some more information like who
10 is doing the buying. So there are required fields
11 that I've got to complete. And that will take us a
12 few slides to get that done.

13 So we'll start with identifying the company that's
14 doing the buying. And then next after that identify
15 the person who is doing the buying. So we're ready
16 now to move off of slide 36.

17 THE COURT: Hold on. We're going to need to
18 switch court reporters at this point. So we'll take a
19 20-minute recess at this point.

20 (Recess taken at 3:50 p.m.)

21

22

23

24

25

1 THE COURT: All right. We had talked about slide
2 36 and the need to fill in the fields that are reflected
3 in the blue area there.

4 THE WITNESS: That's right, Your Honor, and
5 although those actions are necessary to make the system
6 work, they're not important for what we're discussing
7 today. So with your permission, I'd like to just let the
8 video play and blow through some of the slides that are
9 unimportant.

10 THE COURT: Sure.

11 THE WITNESS: When we get to slide 45, we'll stop
12 and go through them individually once more.

13 THE COURT: All right.

14 THE WITNESS: So the screen is now showing slide
15 37 where up here we filled in the job name and the job
16 description, and we'll see that coming back later. So now
17 we'll just let the video role, and I'll narrate quickly.

18 Q Did you accord this job description a name to identify
19 it with the requisition that you had previously?

20 A Yes, I did. This is job name RQC 1045, and job
21 description, requisition number 1045, and 1045 is what we
22 got in the popup window as we ran the creation of the
23 requisition.

24 Okay. So, play. And we're picking the company and
25 the person who is doing the buying. We're selecting

1 fields that have to be selected. Stop. Let me see how
2 far we got.

3 Q You are on slide 43 now?

4 A Right, slide 43. So a bit more. Run. Stop. Okay,
5 so now we're on slide 45. So we're ready to click on the
6 submission button, and we're on slide 45. And by submit,
7 we're submitting the requisition to the purchase order
8 processing module, and it's going to produce purchase
9 orders for us.

10 So from slide 45, we're going to move on when we click
11 submit. So, play. Stop. All right, in that instant, the
12 purchase orders have been created, and we're going to see
13 them by using this utility called the print manager. So
14 we are now on slide 46, and we'll move toward slide 47.
15 Run. Click on print manager, stop.

16 So here's a whole list of purchase orders that have
17 been produced. They are sorted by date over here. Since
18 ours was the last one to run, it's the top row on this
19 list. So in order to view the purchase order, all I have
20 to do is click on that top row.

21 So I'm going from slide 47 toward slide 48. Run.
22 Stop. So now we're on slide 49 where we're seeing the
23 header of the purchase order that tells us who the buyer
24 was, and we're going to scroll down to see the purchase
25 order details themselves. So, run. Stop.

1 So here we are on slide 50. So we have a first
2 purchase order, and we have a second purchase order. The
3 first purchase order is for those sterile surgical gloves,
4 and that purchase order is headed to Baxter Health Care,
5 and the second purchase order is that Dell computer, and
6 that's going to go to Diablo. Then we have confirmation
7 down at the bottom, report completed, and two purchase
8 orders are created. And that is the content here of slide
9 51.

10 So my demonstration confirms that a system with RQC
11 can practice the first five elements of claim 26, and Your
12 Honor wanted to know on an element-by-element basis how
13 that was done. So looking at the text of claim 26, the
14 system using RQC was able to use a method comprising the
15 steps of maintaining at least two product catalogs on a
16 database containing data relating to items associated with
17 respective sources.

18 So we saw in my demonstration that there were at least
19 two product catalogs. In fact, we saw three, Office Max,
20 Diablo, and Baxter Health Care. And then for elements two
21 and three, we saw selecting the product catalogs to search
22 and searching for matching items among the selected
23 product catalogs.

24 When we were using the category search, we found the
25 ThinkPad from Office Max that I put on the requisition

1 lines and then later deleted, and then we saw the Dell
2 computer from Diablo and the surgical gloves from Baxter
3 Health Care.

4 Then for the fourth element, building a requisition
5 using data related to selected matching items and their
6 associated source or sources, again we saw the Dell
7 computer from Diablo and the surgical gloves from Baxter
8 Health Care, and for the fifth element, processing the
9 requisition to generate one or more purchase orders for
10 the selected matching items. That's where we are, back on
11 slide 51, the end of the slide deck.

12 Slide 51 showed that we did generate two purchase
13 orders, one to Diablo for the Dell computer and one to
14 Baxter Health Care for the surgical gloves.

15 Q Did the demonstration system produced by Lawson in
16 discovery include the EDI module?

17 A It did not.

18 Q If it had included the EDI module, could you have
19 demonstrated any additional capabilities that would be
20 pertinent to the elements of claim 26?

21 A Yes.

22 Q What additional capabilities could you have
23 demonstrated with the EDI module?

24 A The EDI module could have sent these purchase orders
25 to the vendors, the vendors would have responded with a

1 purchase order acknowledgment, and the EDI module would
2 have compiled a purchase order acknowledgment report that
3 would have told us whether these items were available in
4 the inventory and vendor.

5 Q Do you have a second demonstration showing the use of
6 the systems having Requisition Center when searching a
7 Punchout catalog?

8 A Yes, I do.

9 MS. ALBERT: And, Your Honor, that would be
10 Plaintiff's Exhibit 1134 is the video, and the slide deck
11 corresponding to the video is Plaintiff's Exhibit 1134-A.

12 Q And since we've seen some of the capabilities, perhaps
13 we can speed through the slides a little bit quicker, but
14 please explain what you are doing as the video progresses.

15 A Okay. All right. So let's play. Here is the log-in.
16 Here is choosing Requisition Center, slide two, the
17 shopping. Then I'll go to that find/shop tab in just a
18 second.

19 Q Which catalogs are you going to select to search?

20 A Stop. So now instead of using categories to search
21 the item master, I'm going to choose Punchout and look at
22 what catalogs are available from the Punchout trading
23 partners. So we're almost up to slide three. Play. And
24 stop.

25 Q How many catalogs are configured and connected to this

1 demonstration system?

2 A For this system, there are two. As you can see, there
3 are icons for Staples and for Dell.

4 THE COURT: Again, there could be more vendors
5 than just two, but for purposes of this demonstration, you
6 have put two on here.

7 THE WITNESS: That's right. There could have
8 been many.

9 Q And does system also have catalogs in the item master?

10 A Yes, at the same time, right. Okay, so I'm going to
11 choose the Staples catalog and move us along from slide
12 three, so play. So that click put us in full screen mode.
13 Stop.

14 Now, Your Honor, I know that you can't see this, but
15 let me just note that -- now I can't draw. I don't want
16 to do that. Okay, Armando, can you do that again, please?
17 What I wanted to show you was that even though we have,
18 indeed, punched out to Staples, this is not the public
19 Staples that you or I would access from home.

20 This URL that you see up at the top of the enlarged
21 window here -- there we go, right. You'll note that we
22 are connected to Lawson.com during the whole time that
23 we've punched out, and that's necessary so that when we're
24 done shopping, we can successfully take the shopping cart
25 at Staples and take that back into the requisition lines

1 of Lawson.

2 Okay, so let's go back to the video.

3 Q Which slide are you on now?

4 A We're now on slide five. This is Staples, the Lawson
5 trading partner, and what I want to do is search for a
6 desk. So up here in the -- I don't know why I can't draw
7 anymore, but I can't. Okay, so in the text box where the
8 cursor is sitting at the middle top of the screen, I'm
9 going to use the keyword search capability, and I'm going
10 to type in desk, and I'm going to click on that blue
11 button that says search to the right of that text box.
12 Play.

13 So I type in desk. That's slide six. Click search,
14 stop. Now I'm on slide seven, and I really wish I could
15 draw on this, but what it says is that your search for
16 desk returned 1,415 matches. Well, I don't think we want
17 to look at all of those, so I'm going to narrow the search
18 by brand.

19 So over in the left-hand navigation, when I scroll
20 down to the very bottom, there will be the opportunity to
21 select brands. So I'm going to do that. I'm going to
22 select the brands Ameriwood and Global, and that's going
23 to drastically reduce the items that match desk, because
24 they also have to match Ameriwood or Global.

25 So play. There I'm scrolling down to brand, I do the

1 check box for Ameriwood, I scroll down, I do the check box
2 for Global, I click on update. It's updating. Stop.

3 And so now I have a whole new set of desks to look at,
4 and I've moved us up to slide ten. So the first desk in
5 the list of 72 matches is an Ameriwood desk. So I'm going
6 to click on that link that you see outlined there, and
7 that's going to give me a description of this Ameriwood
8 desk. Play.

9 Stop. Here's the item detail page. It has, as you
10 can see, a picture of the desk, a description of the
11 Staples item number and the manufacturer item number, and
12 at the bottom, you have a description of the desk, and
13 then underneath the button that says add to cart, there is
14 a link that says, check delivery date. So I'm going to
15 click on that. So that's going to take us from slide 11
16 forward. Play.

17 Stop. Now we're on slide 12, and so as a result of
18 clicking on that link, I have the response that this item
19 is backordered. So I know now that this desk is not
20 available in the vendor's inventory, and so I want to get
21 something else. So I'm going to go back and look at the
22 list of desks and pick another one. So now moving forward
23 from slide 12, play.

24 So here's my list the of 72 desks. So stop. So I'm
25 going to select this Global Laurent double pedestal

1 executive desk, and that will bring up the item detail
2 page for that. So now I'm moving off of slide 13. Play.

3 Stop. So here is the item detail that gives me the
4 picture, the numbers, the price, et cetera, the
5 description. Under, again, that add to cart button is
6 check delivery date. I'm going to click that link, so I'm
7 on slide 14. Play.

8 So this gives -- stop. This gives me the delivery
9 date. I know it's not backordered, so I know that this
10 desk is available in Staples' inventory. So now I'm going
11 to add it to the cart, so I'm moving towards slide 16.
12 Play. Add to cart, and stop.

13 So now this desk has been added to the shopping cart.
14 I still see its description up in the top right-hand
15 corner where it has the icon of the -- the icon of the
16 shopping cart. It says to the right of that, one item, it
17 gives the price, and now I can choose to check out from
18 Staples, so I'm going to click that. Play.

19 Stop. So now we're on slide 19. So this is my chance
20 to review the item information and see if it's correct and
21 decide if I really want to return this item to the Lawson
22 system. So I do. So I'm going to scroll down here and
23 click on submit. Play. Clicking on submit, that's slide
24 20. Poof. Stop.

25 Slide 21. This is why Lawson and the Punchout partner

1 have to stay connected. When I've checked out from
2 Staples, there has to be a transfer of information back
3 into requisition lines. That's what's going on here with
4 slide 21. So when we get to slide 22, that information
5 will be in requisition lines. Play.

6 Stop. So there's the desk up in requisition lines.
7 So I'm ready to release this to build the purchase order,
8 so I'll go down to the bottom right button and click on
9 release. So, play. This is me clicking release, it's
10 releasing, slide 23. 24, stop.

11 So now I have the popup requisition has been
12 successfully submitted, and my requisition number is 1053.
13 So I'll need that information in a minute. So now what
14 we're going to do is what we saw before. We're going to
15 go back to Lawson home. We're going to run the PO 100
16 program. We're going to build a purchase order from this
17 one item in this one requisition. So I'll let this play
18 until we get to the purchase order part, the part that we
19 want to see.

20 Q And your requisition number is what number?

21 A 1053. Okay, so now we're going to speed through this
22 to get to slide 42. Play. I say okay to clear the popup,
23 go back to Lawson home, run PO 100 that I've just typed
24 in. Here is this information that's required, put in the
25 job name, the job description which is requisition number

1 1053, define the buyer company, the buyer person, the
2 other required information.

3 THE COURT: What you are doing now, what you are
4 talking about now you're doing on slides 25 through 41.

5 THE WITNESS: Right, correct. Play. Put in the
6 requisition number 1053, add that, and then submit to the
7 processing system. Here's the submit. And stop.

8 So we are now about to use the print manager that
9 we saw before. It's going to take us to the list of
10 purchase orders. Ours will be on top, and we'll click
11 that to view it. Play.

12 So here's ours. Click on it. Here's the header,
13 and we're going to scroll down. Stop. And now if the
14 drawing worked, I could draw your attention to it, but
15 two-thirds of the way down, there's the Global Laurent
16 double pedestal desk, and to the left of that it says that
17 the vendor is Staples. At the very bottom it says report
18 completed, one purchase order created.

19 Q So with this demonstration, were we able to see that
20 the user had --

21 MS. ALBERT: Can you bring up claim 26, please?
22 Sorry.

23 Q Can you tell me whether you saw that the user
24 maintained at least two product catalogs on a database
25 containing data relating to items associated with the

1 respective resources?

2 A We did, and that was the Staples and Dell catalogs.

3 Q And were you able to select product catalogs to
4 search?

5 A Yes. I selected Staples.

6 Q And were you able to search for matching items among
7 that selected product catalog?

8 A I was. I searched for desk.

9 Q Did we see the step of building a requisition using
10 data relating to the selected matching items and their
11 associated source?

12 A Yes, we built a requisition for the Global brand desk.

13 Q Were you able to process the requisition to generate
14 one or more purchase orders for the selected matching
15 items?

16 A Yes, we did. We generated a purchase order for the
17 Global desk.

18 Q And in your demonstration, were you able to determine
19 whether a selected matching item was available in
20 inventory?

21 A Yes. When we looked for that Ameriwood desk, we found
22 that it was backordered, so we didn't pursue that and
23 instead picked the Global desk, and it was available in
24 inventory.

25 Q Thank you. Dr. Weaver, I'd now like to direct your

1 attention to Plaintiff's Exhibit 1022 in your exhibit
2 binder. Was this an example that you considered in
3 connection with your analysis of the RQC configurations
4 capabilities?

5 A Yes, it was.

6 Q What is this exhibit?

7 A It's an email relating to the Cleveland Clinic's
8 questions about RQC.

9 Q Will you turn to page RQC 7678.

10 A Yes.

11 THE COURT: What exhibit are you on?

12 THE CLERK: 1022, Your Honor.

13 MS. ALBERT: Just for recordkeeping, I'd like to
14 offer into evidence Plaintiff's Exhibit 1134 and 1134-A
15 which were the Punchout video and the slides.

16 THE COURT: You have already objected to them.

17 MR. THOMASCH: I have, and I would object in
18 particular to the video which I think is just --

19 THE COURT: What is that?

20 MR. THOMASCH: I would object in particular to
21 the videos which I think are just a demonstrative to help
22 explain testimony which is in the record. I don't mind
23 the slides because they at least are identified in the
24 record by slide number, and I do think it would help, you
25 know, people to be able to associate what was being looked

1 at with what was being testified to, but the video, I
2 think, is best viewed as a demonstrative only and not as
3 admitted into evidence.

4 MS. ALBERT: We already admitted the other video
5 into evidence, so I don't understand what the difference
6 is between --

7 THE COURT: Which other video?

8 MS. ALBERT: Plaintiff's Exhibit 1135 was already
9 admitted into evidence, so I don't really understand the
10 distinction between the two. I think it's a video that
11 was captured using --

12 THE COURT: Does it have the slide numbers on it
13 in the bottom right-hand corner?

14 MS. ALBERT: The video?

15 THE COURT: When you look at the same -- when you
16 look at the screen shot, it's got the slide numbers on it.
17 Does it have numbers on the corresponding location in the
18 video?

19 MS. ALBERT: I don't believe so. I think it just
20 has a time counter. And the video is actually created
21 using the actual Lawson system that was produced in
22 discovery using the software on that system.

23 THE COURT: All right, anything else?

24 MR. THOMASCH: Nothing more.

25 THE COURT: The videos are admitted as exhibits,

1 Plaintiff's Exhibits 1134 and -35 and the screen shots are
2 admitted as Plaintiff's Exhibits 1134-A and 1135-A.

3 MS. ALBERT: Thank you, Your Honor.

4

5 (ePlus Exhibits 1134-A and 1135-A admitted.)

6

7 Q Turning back --

8 THE COURT: And you need to make sure that --

9 I've written on my copies of 1134 and -35 screen shots, A
10 and B. You need to make sure the Court's copy has got
11 that so that in the record -- just take something and
12 write it on there with a Sharpie or something that won't
13 come off.

14 Q Referring back to Plaintiff's Exhibit 1022 at RQC
15 7678?

16 A Yes.

17 Q Are you there?

18 A I am.

19 Q In the email from Kristin Stolte at Lawson.com to
20 Linda Koltas of Cleveland Clinic on June 20th, 2011, how
21 did Lawson, the representative of Lawson respond to
22 Cleveland Clinic's questions?

23 A The answer was, with regard to Punchout and SciQuest,
24 RQC will function as RSS did. We support one Punchout
25 vendor website/connection. SciQuest will come back with

1 multiple vendors on the same requisition with one
2 punch-out.

3 Q What do you consider important in connection with this
4 exhibit with respect to your infringement analysis?

5 A This tells me that systems having RQC continue to have
6 the ability to connect to multi-vendor websites such as
7 SciQuest and that items associated with multiple vendors
8 can continue to be placed on a requisition when shopping
9 at a multi-vendor Punchout site.

10 So as we saw in my demonstration, if a requisition
11 includes items associated with multiple vendors, then the
12 purchase order module will generate multiple purchase
13 orders from that requisition.

14 Q Thank you. Let's turn back to claim 26. Do you have
15 an opinion as to whether or not the systems configurations
16 three and five having RQC continue to infringe claim 26 of
17 the '683 patent?

18 A Yes, I do believe that configurations three and five
19 with RQC continue to infringe claim 26.

20 Q How are the RQC configurations used to perform the
21 first step of claim 26?

22 A The systems with RQC continue to have the ability to
23 maintain at least two product catalogs associated with
24 their respective sources.

25 Q What are the ways that they can maintain product

1 catalogs associated with multiple sources?

2 A Well, they can maintain multiple vendor product
3 catalogs in the item master as I've shown in my
4 demonstration. You could connect to multiple Punchout
5 sites and search their catalogs. In my demonstration, I
6 did that with Staples, and I could have done that with
7 Dell.

8 In addition, I could have connected to a multi-vendor
9 Punchout site like SciQuest and searched multiple catalogs
10 there.

11 Q How were the RQC configurations used to perform the
12 steps of selecting the product catalogs to search and then
13 searching for matching items among the selected product
14 catalogs?

15 A The system with RQC can still be used to select the
16 product catalogs to search from among the two or more
17 product catalogs in the item master, or I could have
18 selected one of multiple Punchout catalogs to search, or I
19 could select one or more vendor catalogs to search at a
20 multi-vendor Punchout site.

21 Q Do the RQC configurations build a requisition using
22 data related to selected matching items and their
23 associated source or sources in accordance with the fourth
24 element of claim 26?

25 A Yes, they do.

1 Q And how is that done?

2 A So as we saw, as we searched for selected matching
3 items and brought them back into requisition lines, when
4 we release that, we built a requisition using the data
5 associated with the selected matching items.

6 Q How are the RQC configurations used to perform the
7 fifth step of claim 26?

8 A If the requisition has items associated with a single
9 source, then the system will generate one purchase order.
10 If the requisition contains items from multiple vendors,
11 then it will -- the system will generate multiple purchase
12 orders.

13 Q Now, with respect to the last element of claim 26, how
14 are the RQC configurations used to perform that step?

15 A That could be done either by -- at a Punchout site,
16 querying the vendor's inventory as I showed in my
17 demonstration, or if we had had the EDI module, we would
18 have been able to show that we could receive purchase
19 order acknowledgements from the vendor, and EDI would have
20 built a purchase order acknowledgment report that would
21 have told us whether or not the items were available in
22 the vendor's inventory.

23 Q Have you reviewed any evidence indicating whether or
24 not Lawson has installed and implemented systems with RQC
25 and Punchout?

1 A Yes.

2 Q What have you reviewed?

3 A Well, I've seen documents indicating that Lawson is
4 using systems with RQC and Punchout, and I know that
5 Lawson is using the system that I showed you in its sales
6 and marketing and training efforts, and Lawson has
7 produced and disseminated training videos and webinars
8 that show customers how to use RQC and Punchout.

9 Q Now, turning to the issue of indirect infringement,
10 have you rendered any opinions as to whether or not Lawson
11 continues to induce and contribute to its customers'
12 direct infringement of claim 26 of the '683 patent?

13 A Yes. I have two bases for my opinion. First, systems
14 having RQC continue to infringe, and Lawson continues to
15 induce --

16 THE COURT: Excuse me just a minute.

17 MR. THOMASCH: May I interrupt for a moment? I'm
18 at a little bit of a disadvantage here, but I'm not -- the
19 witness appears to be a reading a document. If he is, I
20 would ask for its production under Rule 612. I don't know
21 if that's actually occurring or not, but it seems to be
22 because he is looking down and reading and turning pages.

23 THE COURT: I can't see, so -- are you reading
24 from something?

25 THE WITNESS: I have notes, Your Honor, yes.

1 THE COURT: You have notes.

2 THE WITNESS: Notes.

3 MR. THOMASCH: May I ask for their production
4 under Rule 612, Your Honor?

5 MS. ALBERT: I have no objection.

6 THE COURT: But do you have copies of it?

7 MS. ALBERT: No.

8 THE WITNESS: Your Honor --

9 MS. ALBERT: I don't have --

10 THE WITNESS: They are my notes.

11 THE COURT: I know, but if you are using them to
12 testify, under the rules he is entitled to look at it, and
13 she doesn't have any objection, but he can't testify from
14 them and show them to Mr. Thomasch at the same time. So I
15 need a copy of them is my point. That's all I was trying
16 to say. How many pages are there, because we can do it
17 back in my office.

18 THE WITNESS: It's one page.

19 THE CLERK: I'll do it, Your Honor.

20 MR. THOMASCH: Your Honor, is that the totality
21 of the notes that Dr. Weaver has with him or just what he
22 was reading at the moment?

23 THE COURT: What's that?

24 MR. THOMASCH: May I ask if that was the totality
25 of notes that Dr. Weaver brought with him to the stand, or

1 whether that was simply the page he was referring to at
2 the moment.

3 THE COURT: I understood him to say it was what
4 he had and what he was referring to.

5 THE WITNESS: Those were my notes for those
6 questions. I have a second page of notes.

7 MR. THOMASCH: May I have --

8 THE COURT: For subsequent questions, or for your
9 own use?

10 THE WITNESS: It was for my own use in answering
11 the questions I was asked.

12 MR. THOMASCH: It appeared a page has been turned
13 and that he had previously been reading.

14 THE COURT: Is that other page that you have
15 another page, something you've looked at earlier?

16 THE WITNESS: Yes, it is, Your Honor.

17 THE COURT: Can we have that and give that to Mr.
18 Neal. Sorry. I didn't understand.

19 MR. THOMASCH: Thank you, Your Honor.

20 MS. ALBERT: Can we continue?

21 THE COURT: Well, I'm going to get Mr.
22 Thomasch -- if the witness is using the note to help
23 himself, and it's a complicated area, I understand that,
24 Mr. Thomasch is entitled to have it, and so is the
25 witness. That's all right. It won't be but a minute. I

1 hope they don't have to wait for the machine to warm up.

2 Do you need a copy? I didn't ask you.

3 MS. ALBERT: Pardon me?

4 THE COURT: Do you need a copy?

5 MS. ALBERT: I don't guess so.

6 THE COURT: All right, do you know where you were
7 in your question?

8 MS. ALBERT: I think so.

9 Q Dr. Weaver, have you rendered any opinions as to
10 whether or not Lawson continues to induce or contribute to
11 its customers' direct infringement of claim 26?

12 A Yes, I have.

13 Q What are the bases for your opinion?

14 A RQC continues to infringe, and Lawson continues to
15 induce or contribute to its customers' direct infringement
16 by the customers' use of systems having RQC. And Lawson
17 has told the customers that RQC has 100 percent of the
18 functionality of RSS in order to induce them to download
19 RQC.

20 And I also think that Lawson continues to induce or
21 contribute to the infringement by asking its -- by aiding
22 and abetting its customers' use of the infringing systems
23 using RSS.

24 Q What evidence have you reviewed and relied upon that
25 relate to your opinions that Lawson indirectly infringes

1 claim 26 by aiding and abetting and contributing to its
2 customers' use of the systems having RQC?

3 A Lawson provides RQC on its website with the intent
4 that it will be downloaded by customers. Lawson has
5 fielded an RQC SWAT team to assist customers with RQC
6 installation. Lawson has published and distributed
7 manuals explaining how to configure and use systems having
8 RQC. Lawson has disseminated training programs showing
9 how to use systems having RQC. Lawson produced webinars
10 and video training systems that show how to use RQC, and
11 Lawson provides ongoing consulting and maintenance and
12 support services.

13 Q What is the basis for your opinion that Lawson
14 continues to induce and contribute to the direct
15 infringement of claim 26 by aiding and abetting its
16 customers' ongoing use of the infringing configurations
17 having RSS?

18 A I have seen documents in which Lawson is telling its
19 customers that they continue to use RSS and explaining how
20 to do so.

21 Q Do you know whether or not Lawson made any efforts to
22 determine whether its customers had actually installed and
23 implemented RQC into their production procurement systems?

24 A From the deposition testimony that I read, I think
25 that Lawson has not put any effort into determining

1 whether customers are actually installing and using RQC.
2 As late as January 2012, Lawson witnesses testified that
3 they only knew one or two customers that had installed and
4 implemented RQC.

5 The witnesses also testified that Lawson doesn't
6 maintain records identifying which of those customers
7 installed and implemented RQC.

8 Q In your opinion, does a download of the RQC
9 application change a customer's configuration?

10 A No.

11 Q Does the installation of RQC automatically uninstall
12 the RSS application?

13 A It does not.

14 Q Will Lawson continue to provide assistance to a
15 customer with RSS as long as the customer had downloaded
16 RQC?

17 A Yes. The deposition testimony that I saw said that
18 the only thing Lawson considered was whether or not a
19 download had been done.

20 Q So based on the documents you reviewed and the
21 deposition testimony of Lawson's witnesses, do you have an
22 opinion as to whether or not Lawson continues to induce
23 and contribute to its customers' use of the systems that
24 the jury found to be infringing with RSS?

25 A My opinion is yes.

1 MS. ALBERT: Thank you. No further questions.

2

3 CROSS-EXAMINATION

4 BY MR. THOMASCH:

5 Q Good afternoon, Dr. Weaver.

6 A Good afternoon, Mr. Thomasch.

7 Q Can I ask you, the notebook in front of you, is that
8 your witness notebook?

9 A Yes, it is.

10 Q And do you have that annotated?

11 A Yes, I do.

12 Q And that's your handwriting?

13 A Yes, it is.

14 Q And as you were being questioned today, you were
15 making reference to is that; is that correct?

16 A Of course.

17 MR. THOMASCH: Your Honor, those are additional
18 writings, and I believe Rule 612 is very broad. It
19 doesn't need to be a separate sheet of paper. Any writing
20 that used by a witness while testifying needs to be
21 produced, and in light of what has been produced, I'm very
22 interested in having the balance produced, and I would
23 request them under Rule 612.

24 MS. ALBERT: No objection.

25 THE COURT: All right. They'll be produced.

1 MR. THOMASCH: Your Honor, I wonder if we might
2 be able to receive production tonight and start with cross
3 in the morning. I do feel this is an important issue as
4 the extent of the writings involved are unusual.

5 THE COURT: I sort of lost the last part.

6 MR. THOMASCH: Your Honor, I said I believe the
7 extent of the writings are unusual, and before -- I'm
8 going to start with the demonstrations themselves, and if
9 there are notes on the tabs on the demonstration or the
10 like --

11 THE COURT: There are notes on the demonstrations
12 or the witness notebook, the one that has 11 -- you are
13 talking about the 1134 and -35; is that what you are
14 talking about?

15 MR. THOMASCH: That, if there was writing on
16 them --

17 THE COURT: Are there notes on --

18 MR. THOMASCH: And the witness's --

19 THE COURT: Just a minute. Are there copies of
20 your -- do you have notes on 1134 and 1135 as well?

21 THE WITNESS: Yes, I do.

22 THE COURT: Okay. Now, so you want to do what?

23 MR. THOMASCH: I would like to recess, Your
24 Honor. I would like to receive copies of all writings
25 that the witness has made in aid of his testimony. I

1 would like to receive copies of those, and after I've had
2 a chance to review them, I would like to cross-examine
3 this witness.

4 THE COURT: You said you had no objection to the
5 production thereof?

6 MS. ALBERT: No objection.

7 THE COURT: All right. You're going to work out
8 a way to copy them, because we're not going to work on
9 that copying.

10 MR. THOMASCH: We can take care of that, Your
11 Honor.

12 THE COURT: I assume they'll copy it. Do you
13 have a copier here in the building? Some of the lawyers
14 have imported copiers.

15 THE CLERK: I'll provide the copy services in the
16 clerk's office. If it won't take that long, I'll stay
17 with them tonight.

18 THE COURT: You're about ready to get furloughed
19 if you are not careful. That's a long time. I see a
20 lot -- that witness notebook. Well, I think it's all
21 right to -- just a minute. They're talking. What, Mr.
22 Strapp?

23 MR. STRAPP: Just checking out logistics.

24 THE COURT: How much longer do we have tomorrow?
25 We've got one witness that we've used on damages who has

1 testified only. That's the only damage witness we've had.
2 How much longer?

3 MR. STRAPP: We have one expert witness on
4 damages, and that's the only remaining witness for ePlus.

5 MR. DUSSEAULT: We have a damage witness as well,
6 Your Honor.

7 THE COURT: Do you have any idea how long that
8 will take, Mr. Strapp?

9 MR. STRAPP: I think our expert, including direct
10 and cross, should probably be under two hours, maybe hour
11 and a half.

12 THE COURT: And yours, Mr. Dusseault?

13 MR. DUSSEAULT: I'm sorry. I missed what Mr.
14 Strapp said.

15 THE COURT: Under two hours.

16 MR. DUSSEAULT: Including the cross.

17 MR. STRAPP: I can't vouch for your cross.

18 MR. DUSSEAULT: My estimate would be 60 to
19 90 minutes on our expert and 60 minutes in cross of theirs
20 if I actually received yes-and-no answers to the
21 questions.

22 THE COURT: You talk about a caveat.

23 MR. DUSSEAULT: I know that caveat has to be
24 given, Your Honor.

25 MR. THOMASCH: Your Honor, we may have -- we may

1 have one short infringement fact witness.

2 THE COURT: Are we going to do the rest of it on
3 Saturday or Monday?

4 MR. THOMASCH: We will absolutely finish
5 tomorrow.

6 THE COURT: Including all arguments.

7 MR. STRAPP: Your Honor, could you just clarify,
8 please, if you could help us, what arguments do you want
9 to hear tomorrow?

10 THE COURT: I thought you were going to provide
11 arguments on the injunction.

12 MR. STRAPP: We can do that.

13 THE COURT: That was my understanding. What do
14 you propose to do about the rest of this?

15 MR. STRAPP: We can offer either closing
16 arguments and that would be it, or we can do the
17 post-hearing briefing that you suggested you may be
18 inclined --

19 THE COURT: Which do you want to do, I said. I
20 tried to say. I don't know what I said. Sorry, it's
21 late.

22 MR. STRAPP: I think, Your Honor, we prefer to
23 put in briefs with findings of facts and conclusions of
24 law.

25 MR. THOMASCH: We would be happy to do that way.

1 As long as we have a chance to orally argue before Your
2 Honor, that would save us the task of having to write
3 opinions. We would do it at the Court's convenience. I'm
4 perfectly happy to do what Mr. Strapp suggested.

5 THE COURT: We'll hear the injunction argument
6 tomorrow, or we'll hear it Saturday or Monday. I'm not
7 sure which. I think there's some work going on in the
8 courthouse that may make Saturday impossible. I didn't
9 think about that. All right. So 9:30 tomorrow morning.

10 MR. THOMASCH: Thank you, Your Honor.

11 THE COURT: You'll get the copies to him right
12 away.

13 MR. STRAPP: Yes.

14 MR. DUSSEAUT: If I may, I want to be clear. On
15 our damages case, it is possible that we may have one very
16 short witness on a limited issue related to remedies, but
17 I didn't want to mislead --

18 THE COURT: Another witness you mean other than
19 the expert?

20 MR. DUSSEAUT: Yes, sir.

21 THE COURT: Okay. Maybe you all can spend the
22 evening honing. All right. We'll be in adjournment.

23

24 (End of proceedings.)

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2
3 We certify that the foregoing is a correct
4 transcript from the record of proceedings in the
5 above-entitled matter.
6
7

8 /s/
9 P. E. Peterson, RPR

Date

10
11 /s/
12 Diane J. Daffron, RPR

Date

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